William C. Early, Acting Regional Administrator, Region III.
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DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children and Families
45 CFR Part 1355
Adoption and Foster Care Analysis and Reporting System

AGENCY: Administration on Children, Youth and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Intent to publish a supplemental notice of proposed rulemaking.

SUMMARY: On February 9, 2015, the Administration on Children, Youth and Families (ACF) published a Notice of Proposed Rulemaking (NPRM) to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations to modify the requirements for title IV–E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV–E agency case, cultural activities that the child is participating in while away from his or her parents, judicial findings of active efforts, and preferential treatment for tribal placement resources. However, we did not propose in the 2015 NPRM to collect information related to ICWA because the enabling statute for AFCARS (section 479 of the Social Security Act (the Act)) had been interpreted as limiting data collection to information related to the title IV–B and IV–E program requirements.

Upon further consideration following the publication of the 2015 NPRM, we have determined that there is authority under the statute (section 479(c) of the Act) to collect ICWA-related data in AFCARS. Specifically, the statute permits broader data collection in order to assess the current state of adoption and foster care programs in general, as well as to develop future national policies concerning those programs. However, the statute includes limits on this broad interpretation of section 479 of the Act that we must take into consideration when contemplating collecting data related to ICWA in AFCARS, including: data collected under AFCARS must avoid an unnecessary diversion of resources from child welfare agencies (see section 479(c)(1) of the Act) and must assure the reliability and consistency of the data (see section 479(c)(2) of the Act).

Dated: March 25, 2015.
Mark H. Greenberg, Acting Assistant Secretary for Children and Families.
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