specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA provided a consultation opportunity to Tribes located in Oregon, in letters dated May 4, 2022, included in the docket for this action.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' The Oregon Department of Environmental Quality did evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 14, 2024.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2024–03529 Filed 2–22–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970–AC98

Adoption and Foster Care Analysis and Reporting System

AGENCY: Children's Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: ACF proposes to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations that require title IV–E agencies to collect and report data to ACF on children who enter out-of-home care, their providers, and children who have a title IV–E adoption or guardianship assistance agreement to collect additional data related to Indian children.

DATES: In order to be considered, we must receive written comments on or before April 23, 2024.

ADDRESSES: ACF encourages the public to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on correspondence. To download an electronic version of the proposed rule, please go to *https://www.regulations.gov/*. You may submit comments, identified by docket number and/or RIN number, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CBComments@acf.hhs.gov.* Include docket number and/or RIN number in subject line of the message.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

Docket: Go to the Federal eRulemaking Portal at *https://www.regulations.gov* for access to the rulemaking docket, including any background documents and the plain-language summary of the proposed rule of not more than 100 words in length required by the Providing Accountability Through Transparency Act of 2023.

FOR FURTHER INFORMATION CONTACT: Joe Bock, The Children's Bureau, (202) 205–8618. Telecommunications Relay users may dial 711 first. Email inquiries to *cbcomments@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority To Issue NPRM

This NPRM is published under the authority granted to the Secretary of Health and Human Services (HHS) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes HHS to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions for which HHS is responsible under the Act. Section 479 of the Act (42 U.S.C. 679) mandates HHS regulate a data collection system for national adoption and foster care data. Section 474(f) of the Act (42 U.S.C. 674(f)) requires HHS to impose penalties for non-compliant AFCARS data.

II. Background on AFCARS and Proposed Rule Development

Statute

AFCARS is authorized by section 479 of the Act (42 U.S.C. 679), which mandates that HHS regulate a data collection system for national adoption and foster care data. The regulation at 45 CFR 1356.60(d) and the statute at 42 U.S.C. 674(a)(3) detail cost-sharing requirements for the Federal and non-Federal share of data collection system initiation, implementation, and operation. A title IV–E agency may claim Federal Financial Participation (FFP) at the rate of 50 percent for costs of a data collection system specified by section 479 of the Act (42 U.S.C. 679). AFCARS data is used for a variety of requirements, including but not limited to, providing national statistics on the child welfare population, budgeting, providing reports to Congress, and monitoring compliance with the title IV–B and IV–E requirements. Title IV–E agencies must submit data files on a semi-annual basis to ACF. AFCARS regulations were first published in 1993 and states began submitting data in fiscal year (FY) 1995. AFCARS is regulated at 45 CFR 1355.41-.47.

Recent Regulatory History

ACF published a final rule revising the AFCARS regulations on December 14, 2016 (81 FR 90524, hereafter referred to as the ''2016 final rule''). The rule reflected child welfare legislative changes that occurred since 1993 and included many new data elements including information related to the Indian Child Welfare Act of 1978 (ICWA), and about the sexual orientation of the child and their providers (*i.e.,* foster parents, adoptive parents, and legal guardians), and implemented statutory fiscal penalties for non-compliant AFCARS data. This rule was never implemented. Before that rule became effective, ACF published a rule delaying the implementation timeframe (83 FR 42225, August 21, 2018). On May 12, 2020, ACF published a final rule to again amend the AFCARS regulations (*85 FR 28410,* hereafter referred to as the ''2020 final rule''). The 2020 final rule eliminated some of the data elements that were promulgated in the 2016 final rule and reduced the level of detail in others. The Executive Orders and actions leading to the 2020 final rule are explained in detail in the preambles to the following issuances: Advance Notice of Proposed Rulemaking (ANPRM) issued March 15, 2018 (*83 FR 11449*); NPRM issued April 19, 2019 (*84 FR 16572*); and the 2020 final rule, issued May 12, 2020 (*85 FR 28410*). The 2020 final rule was implemented on October 1, 2022, and title IV–E agencies are now required to report AFCARS data as codified in the regulation at 45 CFR 1355.41-.47. Title IV–E agencies were required to submit the first data files with this information to ACF in May 2023. More information is available on the CB website at: *https://www.acf.hhs.gov/cb/data-research/afcars-technical-assistance.*

Some of the data elements that were eliminated or altered in the 2020 final rule related to reporting on the details of ICWA's procedural protections (see also discussion at 84 FR 16573, 16575, 16577, and 85 FR 28411, and 28412). Other data elements, such as reporting on transition plans, educational stability, and health assessment dates and whether they were timely, were also eliminated or altered (see also 84 FR 16576 and 85 FR 28411).

Current NPRM Development

We are now proposing adding data elements and revising some of the current data elements to report more detailed information related to ICWA's procedural protections to AFCARS, in order to fulfill the AFCARS statutory mandate to provide comprehensive national information on the demographics of ''adoptive and foster children and their biological and adoptive foster parents'', ''the status of the foster care population'', and ''the extent and nature of assistance provided by Federal, state, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided'' (section 479(c)(3) of the Act (42 U.S.C. 679(c)(3))).

For American Indian and Alaska Native (AI/AN) children, who are subject to both Title IV–E of the Social Security Act and ICWA, it is impossible to fully understand their experiences in foster care without understanding the extent to which they receive the procedural protections of ICWA. ICWA was enacted in 1978 to ''promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture.'' [1] Congress found ''that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.'' [2] These longstanding practices cause significant harm to Indian children by unnecessarily separating them from their families and communities. As the Supreme Court affirmed in its 2023 decision upholding ICWA:

In 1978, Congress enacted the Indian Child Welfare Act (ICWA) out of concern that ''an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies.'' 92 Stat. 3069, 25 U.S.C. 1901(4). Congress found that many of these children were being ''placed in non-Indian foster and adoptive homes and institutions,'' and that the States had contributed to the problem by ''fail[ing] to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.'' §§ 1901(4), (5). . . . The Act thus aims to keep Indian children connected to Indian families.

Haaland v. Brackeen, 143 S. Ct. 1609, 1623 (2023)

Congress recognized when it passed ICWA that the minimum Federal standards established by ICWA ''for the removal of Indian children from their families and the placement of these children in foster or adoptive homes'' were needed to counter the longstanding state policies and practices that contributed to the disproportionate removal of Indian children from their families and communities (see 81 FR 38779, June 14, 2016). ICWA's key protections include:

—A presumption that cases regarding foster care placement or termination of parental rights should be transferred to tribal courts if the parent, Indian custodian, or Indian tribe so requests (25 U.S.C. 1911(b));
—The right for Indian tribes and Indian custodians to intervene in state court proceedings regarding foster care placement and termination of parental rights (25 U.S.C. 1911(c));
—Requirement that a party seeking foster care placement or termination of parental rights for an Indian child must notify the parent or Indian custodian and the Indian child's tribe (25 U.S.C. 1912(a));
—Requirement to make active efforts to provide services to prevent the breakup of the Indian family before seeking foster care placement or termination of parental rights to an Indian child (25 U.S.C. 1912(d));
—Requirement that termination of parental rights may only be ordered if the court has determined that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The determination must be supported by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses (25 U.S.C. 1912(f) and 25 CFR 23.122).

However, inconsistent state practices in implementation ''ha[ve] led to significant variation in applying ICWA's statutory terms and protections'' (see 81 FR 38779, June 14, 2016). A final rule issued by the Department of Interior, Bureau of Indian Affairs (BIA) noted that at the time of ICWA's passage, ''Congress found that removal of children and unnecessary termination of parental rights were utilized to separate Indian children from their Indian

[1] 25 U.S.C. 1902.

[2] 25 U.S.C. 1901(4) and (5).

communities'' and that ''[t]he standards used by State and private child-welfare agencies to assess Indian parental fitness promoted unrealistic non-Indian socioeconomic norms and failed to account for legitimate cultural differences in Indian families'' (81 FR 38780, June 14, 2016). Additionally, there have been studies indicating that implementation of ICWA is inconsistent.[3] Forty-five years after the passage of ICWA, AI/AN children continue to be over-represented in the child welfare system: during FY 2021, AI/AN children made up one percent of the U.S. child population, but two percent of the child welfare population.[4] Additionally, recent data shows that AI/AN children are at greater risk than other children of being confirmed for maltreatment and placed in out-of-home care.[5] The American Academy of Pediatrics (AAP) recently stated in their Amicus brief to the Supreme Court for *Haaland* v. *Brackeen,* ''[R]emoving an AI/AN child from the child's parents and then failing to foster the child in an AI/AN community where possible would present a significant risk of exacerbating existing trauma—particularly by precluding the opportunity for the child to experience, internalize, and gain strength from the child's AI/AN community and culture, as well as the relationships that come with that community.'' [6] And generally, studies show that procedural bias, such as lack of notice to Tribal parents in child welfare cases, contributed to displacements of AI/AN children from their communities.[7] Additionally, adverse childhood experiences [8] and generational/historical trauma [9] contribute to disparate outcomes of AI/AN youth. Specifically related to adverse childhood experiences, AI/AN children are more likely than children in the total U.S. population to have lived in poverty (27.8 versus 19.5 percent), been a victim of violence or witnessed violence in their neighborhood (15.9 versus 11.6 percent) and lived with a person with a substance use disorder (23.6 versus 11.6 percent).[10]

We anticipate that gathering more ICWA-related data would help ACF, researchers, and other policymakers better understand the status and experiences of AI/AN children and families interacting with the state child welfare systems and better address the continuing overrepresentation in foster care and other poor outcomes that AI/AN children experience. More complete data collection would provide a foundation for improved policy development, targeted technical assistance, and focused resource. This could assist in efforts to mitigate disproportionality for AI/AN children and families, support pathways to timely permanency for these children, and help maintain the integrity of tribal communities.

ACF also seeks additional input on how the data from this NPRM may be used and particularly seeks to understand how this data may be of utility via national statistics. ACF wishes to understand from states specifically on the utility of the data. Since it has been many years since the 2016 final rule and states have submitted data files under the 2020 final rule, ACF wishes to understand the state perspective for today's NPRM.

Under the 2020 rule, the ICWA-related information currently reported to AFCARS is:

- whether the child, mother, father, foster parents, adoptive parents, and legal guardians are tribal members,
- whether the state made inquiries whether the child is an Indian child as defined in ICWA,
- the date that the state was notified by the Indian tribe or state or tribal court that ICWA applies, and
- whether the Indian child's tribe(s) was sent legal notice.

While that is helpful, it does not provide sufficient information about the unique factors particular to AI/AN children to meaningfully inform policymaking. Collecting more data elements related to ICWA's procedural protections would enable HHS, other Federal agencies, and the states to target policy development, training, and technical assistance to specific areas of need.

ACF recognizes that this proposed rulemaking represents a change in approach from our most recent AFCARS rulemaking, the 2020 final rule, which had substantially reduced the number of ICWA data elements to be collected in AFCARS from those that were required under the 2016 final rule. This proposed rulemaking includes nearly all of the ICWA data elements from the 2016 final rule that were not included in the 2020 final rule, with some modified to reduce the reporting burden. As ACF has given the matter further consideration since issuing the 2020 final rule, ACF has determined that it is in the best interest to collect these additional data elements. Collecting these additional data elements related to ICWA's protections would provide critical information about ICWA's procedural protections. These procedural protections were affirmed in the 2023 *Brackeen* decision upholding ICWA, reaffirming ICWA's importance in addressing the longstanding practices that caused harm to Indian children by unnecessarily separating them from their families and communities. Also, collecting this data may provide insight into potential areas for technical assistance and supports to help improve child welfare outcomes. As we explained in the Supplemental Notice of Proposed Rulemaking in 2016, we view robust ICWA-related data as necessary to allow ACF to: assess the current state of adoption and foster care programs and relevant trends that affect AI/AN families; address the unique needs of AI/AN children in foster care and their families by clarifying how the ICWA requirements and title IV–E/IV–B requirements interact in practice; improve training and technical assistance to help states comply with titles IV–E and IV–B of the Social Security Act for AI/AN children; develop future national policies concerning AI/AN children served by

[3] See also *A Research and Practice Brief: Measuring Compliance with the Indian Child Welfare Act,* Casey Family Programs (2015) *https://www.casey.org/media/measuring-compliance-icwa.pdf.*

[4] 4,622 children with a reported race (per 45 CFR 1355.44(b)(7)) of AI/AN entered foster care during FY 2021 (AFCARS Report 29). While that is two percent of the child welfare population, AI/AN children made up one percent of the child population (Child Welfare Information Gateway (2021) *Child Welfare Practice to Address Racial Disproportionality and Disparity, https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/*). We also want to note that the reported race of AI/AN is the closest we have to understanding whether a child is an ''Indian child'' as defined in ICWA at 25 U.S.C. 1903, as of FY 2021.

[5] *Ibid.*

[6] See page 21, retrieved from *https://www.supremecourt.gov/DocketPDF/21/21-376/234042/20220819140750948_21-376.amics.brief.FINAL.pdf.*

[7] Ryan Seelau, Regaining *Control Over the Children: Reversing the Legacy of Assimilative Policies in Education, Child Welfare, and Juvenile Justice that Targeted Native American Youth,* 37 a.m. INDIAN L. REV. 63 (2012), *https://digitalcommons.law.ou.edu/ailr/vol37/iss1/3.*

[8] National Indian Child Welfare Association, *State of American Indian/Alaska Native Children and Families, Part 3: Adverse Childhood Experiences and Historical Trauma,* (2022) *https://www.nicwa.org/wp-content/uploads/2022/11/NICWA-State-of-AIAN-Children-and-Families-Report-PART-3.pdf.*

[9] Ehlers CL, Gizer IR, Gilder DA, Ellingson JM, Yehuda R. *Measuring historical trauma in an American Indian community sample: contributions of substance dependence, affective disorder, conduct disorder and PTSD.* Drug Alcohol Depend. 2013 Nov 1;133(1):180–7. doi: 10.1016/j.drugalcdep.2013.05.011. Epub 2013 Jun 20. PMID: 23791028; PMCID: PMC3810370. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3810370/.*

[10] Around Him, D. & DeMand A., *American Indians and Alaska Natives Must Be Included in Research on Adverse Childhood Experiences* Child Trends, (2018) *https://www.childtrends.org/blog/american-indians-alaska-natives-adverse-childhood-experiences.*

child welfare programs; and inform and expand partnerships across Federal agencies that invest in Indian families and promote resilient, thriving tribal communities (81 FR 20283, April 17, 2016). Upon further consideration, ACF believes that these reasons remain equally valid now in determining the need for ICWA-related data collection.

While ACF's role is not to enforce state compliance with ICWA—that role falls to the Department of Interior's Bureau of Indian Affairs—it is ACF's role, in part, to ensure that state child welfare systems appropriately serve all children, including AI/AN children, and to set national child welfare policy that takes into account the needs of all foster and adoptive children. Additionally, there is no other comprehensive, national data collection related to ICWA that can inform our understanding of the experiences of tribal children in the child welfare system. Given the long history of removal of AI/AN children from their families and communities, the unique cultural considerations that apply to tribes,[11] and Congress's determination that the ICWA procedural protections are essential for AI/AN children and families,[12] we have determined that collecting robust ICWA-related data concerning AI/AN children in the child welfare system can provide valuable insights for ACF, states, tribes and policymakers. ACF is the most appropriate agency in the Federal government to collect data from state child welfare agencies. The proposed collection of ICWA-related data will allow ACF and other stakeholders to better understand how the ICWA procedural protections are operating in the context of child welfare, whether implementation of those protections results in improved outcomes for children, and where states are struggling to implement them or in need of additional resources.

We understand that in establishing these additional data elements, this proposed data collection would put an additional burden on state child welfare agencies. However, this will be the case for any additional data collection requirements. We have given this serious consideration, both out of concern for the effective functioning of those systems in their core function of serving at-risk families and because the AFCARS statute requires ACF to ''avoid unnecessary diversion of resources from agencies responsible for adoption and foster care'' when regulating AFCARS (section 479(c)(1) of the Act (42 U.S.C. 679(c)(1))). We are mindful of the cost to state title IV–E agencies of collecting this data, but at the same time, we are mindful of the costs to AI/AN children, families, and tribes, as well as ACF, states, and policymakers, of not collecting the data. While any data collection requirement imposes costs, the key consideration under the statute is whether such costs result in an ''unnecessary diversion of resources'' from agencies. ACF proposes to collect robust ICWA-related data in order to understand and identify policies to address the disproportionality of AI/AN child involvement in the child welfare system.[13] [14] On balance, we have determined that the value of collecting the data outweighs the burden it imposes, and that any cost imposition is not ''unnecessary.''

In coming to this conclusion, we have considered the comments that we received on the 2018 ANPRM and the 2019 NPRM. Thirty-three states commented in 2018 and nine state/local agencies in 2019 expressing concern with the 2016 ICWA data reporting requirements.[15] They expressed concern that the requirements were too specific for a national data set and are better suited for a qualitative review.[16] Four states also reported that under one percent of the children in their out-of-home care population were ICWA-applicable. Of the few states that supported including the ICWA-related data elements (three in 2018 and three in 2019), they said that they had higher numbers of tribal children and supported including some additional ICWA-related data elements to better inform policy decisions and program management.

—In contrast, all of the Indian tribes/consortiums and organizations that represent Tribal interests that commented, supported maintaining all of the ICWA-related data elements from the 2016 final rule. They argued that the data elements should be maintained because: ICWA has been law for 40 years but there has been little in-depth data and limited Federal oversight regarding this law.

—Collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families are kept together when possible and provide insight into state compliance with ICWA's requirements.

—Without any uniform, national data regarding ICWA's requirements, policymakers do not understand the scope of issues to inform policy changes.

—While some Indian tribes reported good working relationships with some states, the commenters expressed concerns that there are children in state custody who are not identified as Indian children and thus are not protected under ICWA.[17]

We also note that in both 2018 and 2019, there were significant comments submitted by researchers, non-governmental organizations with relevant expertise, and other stakeholders and advocates. While these commenters were typically not in a position to address issues relating to costs of compliance, their comments were informative in considering the utility of the potential data collection. In the 2019 preamble, ACF stated that the ''majority of these commenters opposed streamlining the data [as compared with what was required in 2016] for reasons similar to the commenters representing tribal interests, such as underscoring the importance of certain casework activities and showing national trends. The advocates, tribes, and commenters representing tribal interests expressed that:

• Currently, there are few data collection efforts at the state and Federal level that provide meaningful data on American Indian and Alaska Native (AI/AN) children under the custody of state child welfare authorities and how ICWA is applied in their cases. This population is overrepresented within state foster care systems nationally—in some states by as much as 10 times their population rate. The Federal protections that ICWA provides these children and their families have the potential to reduce disproportionality and achieve permanency for these children. However, without the Federal government collecting more detailed case-level data, it is impossible to know how many AI/AN children are receiving ICWA protections. Collecting this data will also help the Administration for

[11] EagleWoman (Wambdi A. WasteWin), Sisseton-Wahpeton Dakota Oyate of the Lake Traverse Reservation, Angelique and G. William Rice, United Keetoowah Band of Cherokee Indians in Oklahoma. *American Indian Children and U.S. Policy.* Tribal Law Journal 16, 1 (2016). *https://digitalrepository.unm.edu/tlj/vol16/iss1/2.*

[12] 25 U.S.C. 1901 and 1902.

[13] Child Welfare Information Gateway (2021) *Child Welfare Practice to Address Racial Disproportionality and Disparity, https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/.*

[14] See literature review on protective factors research and calls for further research to assess protective factors for AI/AN children: Henson M., Sabo S., Trujillo A., Teufel-Shone N. *Identifying Protective Factors to Promote Health in American Indian and Alaska Native Adolescents: A Literature Review.* J Prim Prev. 2017 Apr;38(1–2):5–26. doi: 10.1007/s10935–016–0455–2. PMID: 27826690; PMCID: PMC5313316.

[15] 84 FR 16,572 at 74.

[16] 84 FR 16,572 at 74.

[17] 84 FR 16,572 at 74.

Children and Families (ACF) provided targeted assistance to states where there are implementation concerns.'' This comment was provided by the National Indian Child Welfare Association.

- States should currently be asking questions that ascertain whether a child is an Indian child as defined in ICWA, including inquiring about the family's tribal membership status;
- Specific data elements on notification of proceedings and transfers to tribal court are important because the timelines in ICWA are rarely met; and
- Information on termination of parental rights, removals under ICWA, and placement preferences are important for determining ICWA compliance (84 FR 16574).

Most other advocacy organizations opposed reducing the data elements as compared with what was required under the 2016 rule for reasons similar to the commenters representing tribal interests, such as underscoring the importance of certain casework activities and showing national trends. The commenters provided broad commentary on the benefit of having new data outweighs the burden of having to report it (84 FR 16574). In the 2020 final rule preamble, all Indian tribes, tribal organizations or consortiums, and organizations representing tribal interests opposed reducing the ICWA-related data elements primarily because they felt that all data elements in the 2016 final rule were needed to assess ICWA compliance, and that national information is important to address disparities, analyze outcomes, and help in working with Indian children and families (85 FR 28411). The national advocacy organizations and other individuals or entities that commented expressed general opposition to the reduction of required data elements for various reasons with the general sentiment being that the 2016 final rule would provide more insight into the foster care population, promote visibility for marginalized groups, and allow data-informed legislating, policy, and program decisions (85 FR 28411). The reasons set forth above align with ACF's need for including the expanded ICWA-related data elements.

In the 2019 NPRM, we had concluded that the concerns articulated by a set of states weighed in favor of significantly reducing the number of ICWA-related data elements from the 2016 final rule and proposed to reduce required ICWA reporting. In coming to that conclusion, among other reasons, we took the position that it was overly burdensome to require all states to modify their data systems to collect data that would only apply to a small percentage of children. However, while all states would have to modify their data systems to allow for collection of the proposed data elements, and report information from court orders, agency caseworkers will only have to actually collect and enter the new ICWA-related data elements proposed here for those children to whom ICWA in fact applies, so the ongoing burden on states with small AI/AN populations would be low (84 FR 16572, April 19, 2019).

In the 2020 final rule, we provided additional justification for the decision not to include additional ICWA-related data elements: (1) HHS is not the cognizant agency over implementing, overseeing, or assessing compliance with ICWA and thus is not able to interpret various ICWA requirements; (2) the IV–B statute at section 422(b)(9) of the Act (42 U.S.C. 622(b)(9)) does not provide authority for ACF to collect ICWA-related data in AFCARS; (3) the AFCARS statute does not authorize ACF to collect data in AFCARS for purposes of assessing states' compliance with ICWA; and (4) ACF would not be able to release specific information regarding a child's tribal membership or ICWA applicability to requestors, except to the Indian tribe in which the child is or may be a member, in order to protect confidentiality given the low numbers of children to whom ICWA applies. 85 FR at 28, 412–13.

Upon further consideration, we do not consider any of these points reasons to not collect the proposed data. First, ACF has never contended that HHS is the cognizant agency with responsibilities over implementing, overseeing, or assessing compliance with ICWA. Collecting the proposed data would provide valuable insights into the experiences of tribal children in the child welfare system, and the data would not be collected to implement, oversee or assess compliance with ICWA. ACF will consult with BIA to ensure that ACF's guidance is consistent with BIA's interpretations of the ICWA statute and regulations, but not because ACF has any role in ICWA enforcement.

Second, Section 422(b)(9) of the Act (42 U.S.C. 622(b)(9)) requires states to include in their child welfare services plans a description, developed after consultation with tribal organizations of the specific measures taken by the State to comply with ICWA. Neither in 2016 nor now is ACF relying on Section 422(b)(9) as authority for this proposed regulation, though the existence of Section 422(b)(9) does underscore Congress' recognition of the importance of ICWA compliance in the work of child welfare agencies.

The third point noted above—that the AFCARS statute does not authorize ACF to collect data in AFCARS for purposes of assessing states' compliance with ICWA—largely misses the point of this data collection. As discussed above, it is not to assess ICWA compliance, but rather to better understand the experiences of tribal children whose cases are subject to the requirements of ICWA.

The fourth point above was that ACF would not be able to release specific information regarding a child's tribal membership or ICWA applicability except to the Indian tribe in which the child is or may be a member in order to protect confidentiality. ACF had reached this decision in light of the need to ensure privacy and confidentiality as several states have less than a handful of Indian children in foster care. There is a significant privacy interest in that the information given could reveal a child's identity, which could allow the identification of children. Safeguarding information of children in small jurisdictions is consistent with existing practice. The current practice for small populations in jurisdictions is to aggregate the data into larger groups so that those children cannot be identified. This current practice would not change under this NPRM. Accordingly, this reduces the availability of data on Indian children to non-tribal members when there are small numbers of children in foster care. Nevertheless, ACF does not believe this is a sufficient basis for not moving forward with the rule.

In the 2020 Final Rule, ACF also based the decision not to reinstate additional ICWA-related data elements in part on concerns about the reliability and consistency of the data (85 FR 28411 and 28419). ACF's current understanding is that caseworkers would have to draw language from court orders and possibly transcripts to be able to report the specific information in these proposed data elements, and that this may be difficult at times. Furthermore, ACF's current belief is that information and actions taken to meet ICWA's requirements may be performed by the courts themselves, and therefore the state title IV–E agency currently cannot always guarantee they have the accurate information for reporting the AFCARS data elements. Both of these possibilities may raise questions about reliability, but they can be addressed through training and technical assistance. In order to better inform its understanding, ACF seeks comment from states on how this work is done currently, whether the information is available in the case management

system or data fields that could be extracted for AFCARS reporting, and what measures states are taking to ensure the reliability of the data. With this information, ACF believes that it can provide specific and tailored technical assistance and training to states to address any reliability concerns. ACF plans to work with BIA on implementation of an eventual final rule and will work with BIA to clarify what information is required to be reviewed and interpreted so that agencies can input and report the proper data for AFCARS. ACF will also work with BIA to address instances where court orders are not clear or if specific information is missing within and how that affects AFCARS reporting. Given the importance of this data and why AFCARS is the right mechanism to collect it, as explained in the preamble, ACF is committed to providing the tailored technical assistance and training needed to help address any data reliability issues that may arise and believes it is sufficiently reliable to be worth collecting.

As studies cited previously in this preamble demonstrate, there are disproportionately negative outcomes generally for AI/AN children, youth, and families, AI/AN children continue to be over-represented in the child welfare system and are at greater risk than other children of being confirmed for maltreatment and placed in out-of-home care. Having more data on ICWA's procedural requirements may help these issues. ACF realizes that all states have or are in the process of modifying their data systems to collect the new data elements, largely unrelated to ICWA, required by the 2020 final rule. ACF also realizes that adding additional data elements to state data collection systems will present an additional financial and personnel cost and that the data is qualitative in nature, meaning that it likely will be more costly and time-consuming to report because, we understand, that the information is in paper files or case notes, and not already within data fields ready for reporting. However, ACF no longer sees these as sufficient reasons to not require reporting of ICWA procedural requirements in AFCARS. AFCARS may be modified when needed, for example, to reflect legislative changes and other changing needs for particular kinds of data. We plan to build in time for states to make the needed modifications and invite comments on what timeframe they would see as sufficient.

Regarding reliance interests of states for this AFCARS NPRM, ACF interprets this to mean that states may be relying on the 2020 final rule remaining in place the way it is. States are in the process of updating information systems to be able to report the 2020 final rule appropriately because most were not compliant in the first data file submission that occurred in May 2023. State will have to expend costs to implement an eventual final rule, as estimated in the Burden estimate section of this preamble. However, the AFCARS regulations may be amended at any time to accommodate changes in law, policy, or other matters that are tied to the title IV–B/IV–E programs. Accordingly, ACF does not view this NPRM as implicating states' reliance interests.

Executive Orders 13985 and 14091

This NPRM is consistent with the administration's priority of advancing equity for those historically underserved and adversely affected by persistent poverty and inequality (Executive Order 13985 *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* Jan. 20, 2021 and 14091 *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* Feb. 16, 2023). Research well-documents the overrepresentation of certain racial and ethnic groups in foster care relative to their representation in the general population. American Indian or Alaska Native children are at greater risk than other children of being confirmed for maltreatment and placed in out-of-home care. They stay in foster care longer. For example, they are less likely to reunify with their families.[18] Additionally, ACF, in using the additional data proposed in this NPRM, could use it to better understand opportunities to advance equity related to the disparate outcomes faced by AI/AN children in foster care.

Summary of Proposal

Currently, state title IV–E agencies report the following related to ICWA in AFCARS:

- Tribal membership of the child, mother, father, foster parents, adoptive parents, and legal guardians—§ 1355.44(b)(4), (c)(3) and (4), (e)(10) and (15), and (h)(4) and (9).
- Whether the state made inquiries whether the child is an Indian child as defined in ICWA—§ 1355.44(b)(3).
- Whether ICWA applies for the child and the date that the state was notified by the Indian tribe or state or tribal court that ICWA applies—§ 1355.44(b)(5).
- Whether the Indian child's tribe(s) was sent legal notice—§ 1355.44(b)(6).

Our proposal is to require state title IV–E agencies to revise some of the current data elements to report more detailed information on ICWA's procedural protections in section 1355.43(b) and to add data elements on certain aspects of ICWA's procedural protections for requests for transfers to tribal court, termination/modification of parental rights, and foster care, pre-adoptive and adoptive placement preferences, in a new § 1355.44(i).

In summary, we propose to require state title IV–E agencies to report the following additional information related to ICWA's procedural protections:

- Whether the state inquired with certain individuals as to whether the child is an Indian child as defined in ICWA and when the agency first discovered information indicating that the child is or may be an Indian child as defined in ICWA (section 1355.44(b)(3) and (4)).
- Information on whether a court determined that ICWA applies for the child, and whether the court decision included testimony of one or more qualified expert witnesses was included for voluntary and involuntary terminations of parental rights, and removals (section 1355.44(b)(6), (i)(2), (3), and (4)).
- Whether the child's parent or Indian custodian was sent notice in accordance with ICWA (section 1355.44(b)(5)).
- Information on requests to transfer cases to Tribal court (section 1355.44(i)(1)).
- Information on meeting the placement preferences under ICWA (section 1355.44(i)(5)–(8) and (10)–(13)).
- Whether the court determined that the IV–E agency made active efforts to prevent the breakup of the Indian family (section 1355.44(i)(9)).

The section-by-section preamble explains in detail how we propose the current CFR be amended to include the new information to report.

III. Implementation Timeframe

Implementation of changes to the AFCARS data elements as described in this NPRM and a precise effective date are dependent on the issuance of a final rule. We anticipate providing state title IV–E agencies with at least two full fiscal years before we will require them to collect and report additional data elements. We seek state title IV–E

[18] Child Welfare Information Gateway, 2021, *Child welfare practice to address racial disproportionality and disparity,* U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/.*

agency comments on the timeframe based on their experiences with implementation of the 2020 final rule.

IV. Public Participation

ACF welcomes comments on all aspects of this proposed rule. ACF specifically seeks comments on the potential benefits and disadvantages of including this data in AFCARS, and from state title IV–E agencies on the cost and burden to incorporate this proposal into their administrative data sets, including information on the following because this will be used to inform the burden estimates in the Paperwork Reduction Act section of an eventual final rule (see *VI. Regulatory Impact Analysis*):

- An estimate of recordkeeping hours to be spent annually to gather and enter the information proposed in this NPRM into the agency's electronic case management system, training and administrative tasks associated with training personnel on these requirements (*e.g.,* reviewing instructions, developing training and manuals), and developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements.
- Reporting hours spent annually extracting the information proposed in this NPRM for AFCARS reporting and transmitting to ACF.

V. Section-By-Section Discussion of Regulatory Provisions

References throughout this proposed rule to ''child'' or ''children'' are inclusive of youth and young adults aged 18 or older who are served by the title IV–E and IV–B programs. We use these terms in the regulatory text and section-by-section preamble discussion because these are used throughout the title IV–E and IV–B statute and regulations.

Severability

For the reasons described above, ACF believes that its authority to implement each of the provisions in the proposed regulation is well-supported in law and practice and should be upheld in any legal challenge. ACF also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the proposed rule is declared invalid, ACF intends that the other provisions be severable.

Section 1355.43 Data Reporting Requirements

This section contains data reporting requirements for AFCARS, such as report periods and deadlines for submitting data files, and descriptions of data quality errors. We propose technical edits to amend paragraphs (b)(1) and (2) to correct cross references to data elements in § 1355.44 and remove paragraph (b)(3) to eliminate obsolete dates.

Section 1355.44 Out-of-Home Care Data File Elements

This section contains the data element descriptions for the Out-of-Home Care Data File.

Section 1355.44(b) Child Information

Paragraph (b) contains specific information for the identified child who is in the Out-of-Home Care Reporting Population.

Researching reason to know a child is an ''Indian Child'' as defined in ICWA. In paragraph (b)(3), we propose that the state title IV–E agency report whether it researched whether there is reason to know that the child is an Indian child as defined in ICWA. We propose to require that the information in each paragraph (b)(3)(i) through (vi) is reported by the state title IV–E agency, which is whether it inquired with the following entities: the child; the child's biological or adoptive mother and father; the child's Indian custodian; and the child's extended family (as defined in ICWA). The state title IV–E agency must also indicate whether the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village. This proposal replaces and expands the current data element in § 1355.44(b)(3) that asks whether the state title IV–E agency made inquiries as to whether the child is an Indian child as defined in ICWA, with a yes/no response option.

Child's tribal membership and reason to know. In paragraph (b)(4), we propose that the state title IV–E agency continue to report information on the child's tribal membership and the state's discovery of information that the child may be an Indian child as defined in ICWA. In paragraphs (b)(4)(i) and (ii), we propose that the state title IV–E agency continue to report whether the child is a member of or eligible for membership in a Federally recognized Indian tribe, and if ''yes,'' the state title IV–E agency must indicate all Federally recognized Indian tribe(s) that may potentially be the Indian child's tribe(s). This information is currently reported in § 1355.44(b)(4)(i) and (ii) and is used to help identify children in the out-of-home care reporting population who are or may be tribal members.

In paragraphs (b)(4)(iii) and (iv), we propose to require the state title IV–E agency to indicate whether it knows or has reason to know that the child is an Indian child as defined in ICWA, and if ''yes,'' then the state title IV–E agency must indicate the date that it first discovered the information indicating the child is or may be an Indian child as defined in ICWA. The information reported for paragraphs (b)(4)(iii) and (iv) and (6) (discussed below) would replace the current data element in § 1355.44(b)(5), which requires the state IV–E agency to report only whether ICWA applies and if so, the date the state title IV–E agency was notified, because this proposal is requiring a state title IV–E agency to report more details related to ICWA's procedural requirements on ''reason to know''.

Notification. In paragraph (b)(5), we propose to require that the state title IV–E agency report whether certain entities were sent notice in accordance with ICWA. In paragraph (b)(5)(i) and (ii), we propose that the state title IV–E agency report whether the Indian child's tribe(s) was sent legal notice in accordance with 25 U.S.C. 1912(a) (which is currently required in § 1355.44(b)(6)) and newly require that if ''yes,'' the state title IV–E agency must report the Indian tribe(s) that were sent notice. In paragraph (b)(5)(iii), we propose that the state title IV–E agency report whether the Indian child's parent or Indian custodian was sent legal notice prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). These data elements replace and expand on the information reported for the current data element in § 1355.44(b)(6) that asks whether the Indian child's tribe(s) was sent legal notice with yes/no response options.

Application of ICWA. In paragraph (b)(6), we propose that the state title IV–E agency report information related to ICWA's application. In paragraph (b)(6)(i), we propose to require the state title IV–E agency to report whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 CFR 23.107(b)(2). If the state title IV–E agency indicates ''yes, ICWA applies,'' then it must complete paragraphs (b)(6)(ii) and (iii) and new paragraph (i) of this section. In paragraphs (b)(6)(ii) and (iii), we propose to require that the state title IV–E agency report the date that the court determined that ICWA applies and the Indian tribe that the court determined is the Indian child's tribe for ICWA purposes. The information reported for paragraphs (b)(6) and (4)(iii) and (iv) (as discussed above) would replace and expand the current data element in

§ 1355.44(b)(5) which only requires reporting whether ICWA applies and if so, the date the state title IV–E agency was notified that ICWA applies. Additionally, we propose to require that the state title IV–E agency report the data elements in new paragraph (i) of this section, if it reports ''yes, ICWA applies'' in paragraph (b)(6)(i). If the state title IV–E agency indicates ''no'' or ''unknown'' in paragraph (b)(6)(i), then the state title IV–E agency must leave new paragraph (i) blank. This instruction prompts state title IV–E agencies to report additional information for children to whom ICWA applies in new paragraph (i) of this section.

Section 1355.44(i) Data Elements Related to ICWA

In new paragraph (i), we propose to obtain information on certain requirements related to ICWA. This paragraph applies only to state title IV–E agencies that reported ''yes, ICWA applies'' in paragraph (b)(6)(i); otherwise, the state title IV–E agency must leave paragraph (i) blank. Tribal title IV–E agencies do not report information in paragraph (i). This section is new and is an expansion of the ICWA-related information state title IV–E agencies are currently required to report under § 1355.44. The information proposed to be reported relate to transfers to tribal court, involuntary and voluntary terminations/modifications or parental rights, active efforts, and placement preferences under ICWA.

Request to transfer to tribal court. In paragraphs (i)(1)(i) and (ii), we propose to require the state title IV–E agency to report whether the child's case record indicated a request to transfer to tribal court for each removal date reported in § 1355.44(d)(1). If the state title IV–E agency indicates ''yes,'' it must report whether the child's case record indicated that there was a denial of the request to transfer to tribal court in paragraph (i)(1)(ii).

Involuntary termination/modification of parental rights under ICWA. In paragraph (i)(2), we propose to require that the state title IV–E agency report information on involuntary terminations or modifications of parental rights under ICWA. The state title IV–E agency must complete this paragraph if it indicated ''involuntary'' in § 1355.44(c)(5). In paragraph (i)(2)(i), we propose to require that the state title IV–E agency indicate whether the state court found beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f). In paragraph (i)(2)(ii), we propose to require that the state title IV–E agency report whether the court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses in accordance with 25 U.S.C. 1912(f). In paragraph (i)(2)(iii), we propose to require that the state title IV–E agency report whether, prior to terminating parental rights, the court concluded that active efforts had been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d).

Voluntary termination/modification of parental rights under ICWA. In paragraph (i)(3), we propose to require the state title IV–E agency to report information on voluntary terminations or modifications of parental rights under ICWA. The state title IV–E agency must complete the information in this paragraph if it indicated the termination of parental rights was ''voluntary'' in § 1355.44(c)(5). In paragraph (i)(3)(i) through (iii), we propose, in accordance with 25 CFR 23.125, that the state title IV–E agency indicate whether the consent to termination of parental or Indian custodian rights was:

- Executed in writing.
- Recorded before a court of competent jurisdiction.
- Accompanied with a certification by the court that the terms and consequences of consent were explained on the record in detail and were fully understood by the parent or Indian custodian in accordance with 25 CFR 23.125(a) and (c).

The state title IV–E agency must indicate ''yes'' or ''no'' for each paragraph.

Removals under ICWA. In paragraph (i)(4), we propose to require that the state title IV–E agency report information on removals under ICWA, for each date reported in § 1355.44(d)(1). In paragraph (i)(4)(i), we propose to require the state title IV–E agency to indicate whether the court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). In paragraph (i)(4)(ii), we propose to require that the state title IV–E agency indicate whether the evidence presented for foster care placement, as reported in paragraph (i)(4)(i), included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). In paragraph (i)(4)(iii), we propose to require that the state title IV–E agency indicate whether the evidence presented for foster care placement, as reported in paragraph (i)(4)(i), indicates that prior to each removal date reported in paragraph (d)(1) of this section, active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d).

Available ICWA foster care and pre-adoptive placement preferences. In paragraph (i)(5), we propose to require that the state title IV–E agency report which foster care or pre-adoptive placements (reported in § 1355.44(e)(1)) that meet the placement preferences of ICWA in 25 U.S.C. 1915(b) and (c) were willing to accept placement for the child, from a list of five options. The following five options in paragraph (i)(5)(i) through (v) are: A member of the Indian child's extended family (as defined in ICWA); a foster home licensed, approved, or specified by the Indian child's tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; and a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe. The state title IV–E agency must indicate in each paragraph (i)(5)(i) through (v) ''yes,'' or ''no,'' or ''not applicable.'' If the Indian child's tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c), the state title IV–E agency must complete paragraph (i)(5)(v) and leave paragraph (i)(5)(i) through (iv) blank.

Foster care and pre-adoptive placement preferences under ICWA. In paragraph (i)(6), we propose to require that the state title IV–E agency report whether each of the Indian child's foster care or pre-adoptive placements (reported in § 1355.44(e)(1)) meet the placement preferences of ICWA at 25 U.S.C. 1915(b) and (c) by indicating with whom the Indian child is placed from a list of six response options: a member of the Indian child's extended family; a foster home licensed, approved, or specified by the Indian child's tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; placement that complies with the

order of preference for foster care or pre-adoptive placements established by an Indian child's tribe; or placement does not meet ICWA placement preferences.

Good cause under ICWA and Basis for good cause, foster care. For placements that do not meet the ICWA placement preferences (reported in paragraph (i)(6)), we propose to require that the state title IV–E agency report in paragraph (i)(7) whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences in accordance with 25 U.S.C. 1915(b) or to depart from the placement preferences of the Indian child's tribe in accordance with 25 U.S.C. 1915(c). If the response is ''yes,'' then the state title IV–E agency must complete paragraph (i)(8), in which we propose to require that the state title IV–E agency report the state court's basis for determining good cause to depart from the ICWA placement preferences. The state title IV–E agency must indicate ''yes'' or ''no'' in each paragraph (i)(8)(i) through (v):

- Request of one or both of the Indian child's parents.
- Request of the Indian child.
- The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915, but none has been located.
- The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
- The presence of a sibling attachment that can be maintained only through a particular placement.

Active efforts. In paragraph (i)(9), we propose to require that the state title IV–E agency indicate whether it made active efforts to prevent the breakup of the Indian family in accordance with 25 U.S.C. 1912(d) and 25 CFR 23.2.

Available ICWA adoptive placements. If the state title IV–E agency indicated the child exited to adoption in § 1355.44(g)(3) *Exit reason,* we propose in paragraph (i)(10) to require that the state title IV–E agency indicate which adoptive placements from a list of four were willing to accept placement of the child. The following four options in paragraphs (i)(10)(i) through (iv) are: a member of the Indian child's extended family; other members of the Indian child's tribe; other Indian families; a placement that complies with the order of preference placements established by an Indian child's tribe. If the Indian child's tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c), the state title IV–E agency must complete paragraph (i)(10)(iv) and leave paragraph (i)(10)(i) through (iii) blank.

Adoption placement preferences under ICWA. If the state title IV–E agency indicated the child exited to adoption in § 1355.44(g)(3) *Exit reason,* we propose to require in paragraph (i)(11) that the state title IV–E agency indicate whether the child's adoptive placement meets the adoptive placement preferences of ICWA in 25 U.S.C. 1915(a) or (c) by indicating with whom the Indian child is placed from a list of the following five options: a member of the Indian child's extended family; other members of the Indian child's tribe; other Indian families; placement that complies with the order of preference for adoptive placements established by an Indian child's tribe; or placement does not meet ICWA placement preferences.

Good cause under ICWA and Basis for good cause, adoption. For placements that do not meet the ICWA placement preferences (as reported in paragraph (i)(11)), we propose to require that the state title IV–E agency indicate in paragraph (i)(12) whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences under 25 U.S.C. 1915(a) or to depart from the placement preferences of the Indian child's tribe under 25 U.S.C. 1915(c). If the response for paragraph (i)(12) is ''yes,'' then the state title IV–E agency must complete paragraph (i)(13), in which we propose to require that the state title IV–E agency report the state court's basis for determining good cause to depart from the ICWA placement preferences. The state title IV–E agency must indicate ''yes'' or ''no'' in each paragraph (i)(13)(i) through (v):

- Request of one or both of the child's parents.
- Request of the Indian child.
- The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the adoptive placement preferences in ICWA at 25 U.S.C. 1915, but none has been located.
- The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the adoptive placement preferences live.
- The presence of a sibling attachment that can be maintained only through a particular adoptive placement.

VI. Regulatory Impact Analysis

Regulatory Planning and Review Executive Orders 12866, 13563, and 14094

Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines ''a significant regulatory action'' and was modified by Executive Order 14094 to mean as ''any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more . . . or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case''. A regulatory impact analysis must be prepared for rules determined to be significant regulatory actions within the scope of section 3(f)(1) of Executive Order 12866. ACF consulted OMB and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866 and was subject to OMB review.

Costs and Benefits

AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in out-of-home care under the placement and care of the title IV–E agency or who are

under a title IV–E adoption or guardianship assistance agreement. The statute requires that AFCARS provide comprehensive national information with respect to these children. Collecting robust ICWA-related data will provide the major benefit of allowing ACF to better understand the underlying reasons for the disproportionality of AI/AN child involvement in the child welfare system.[19]

Federal reimbursement under title IV–E will be available for a portion of the costs that state title IV–E agencies will incur as a result of the revisions in this proposed rule, depending on each state title IV–E agency's cost allocation plan, information system, and other factors. Estimated costs to the Federal Government are provided below in the Burden estimate section. We estimate the Federal portion of the overall information collection costs to be $2,216,786.

Alternatives Considered

Federal agencies must justify the need for regulatory action and consider a range of policy alternatives. We speak to two alternatives that were considered and rejected.

- ACF considered not expanding the ICWA related data elements in AFCARS. An alternative course of action would be to do nothing and leave the requirements at § 1355.44 in place because they were streamlined in the 2020 final rule in response to comments solicited at that time. We rejected this option because of the reasons described earlier in the NPRM. Under this alternative, state title IV–E agencies would continue to report the ICWA-related data required through the 2020 final rule. However, this information would not be robust enough to provide the data on AI/AN children needed to understand their experiences in the foster care system.
- ACF also considered the alternative of implementing a process to monitor ICWA's procedural protections through a case review outside of AFCARS. We decided against that approach because we believe that requiring state title IV–E agencies to collect and report information related to the more detailed aspects of ICWA's procedural protections via AFCARS is preferable because it will result in comprehensive national data. AFCARS data is required to be ''reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies'' and ''provide comprehensive national information'' for the reporting populations (section 479(c)(2) and (3) of the Act (42 U.S.C. 679(c)(2) and (3))). The fact that the statutory penalties for noncompliant AFCARS submissions apply to data proposed under this NPRM may incentivize agencies to provide timely and complete data submissions (section 474(f) of the Act (42 U.S.C. 674)). (Note that agencies are afforded an opportunity to correct and resubmit noncompliant data files, as outlined in 45 CFR 1355.46.)

Congressional Review

The Congressional Review Act (CRA) allows Congress to review major rules issued by Federal agencies before the rules take effect (see 5 U.S.C. 801(a)(1)(A)). The CRA defines a ''major rule'' as one that has resulted, or is likely to result, in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (see 5 U.S.C. chapter 8). OMB's Office of Information and Regulatory Affairs has determined that this final rule does not meet the criteria set forth in 5 U.S.C. 804(2).

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires Federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term ''small entities,'' as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least 5 percent of small entities. However, the Secretary proposes to certify, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rulemaking will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to state title IV–E agencies. Therefore, an initial regulatory flexibility analysis is not required for this proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) was enacted to avoid imposing unfunded Federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. This proposed rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action it takes in this NPRM would not have any impact on the autonomy or integrity of the family as an institution.

Executive Order 13132

Executive Order 13132 on Federalism requires that Federal agencies consult with state and local government officials in the development of regulatory policies with Federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

Paperwork Reduction Act

This proposed rule contains information collection requirements (ICRs) that are subject to review by OMB under the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. PRA of 1995 sought to minimize government-imposed burden from information collections on the public. In keeping with the notion that

[19] Child Welfare Information Gateway (2021) *Child Welfare Practice to Address Racial Disproportionality and Disparity, https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/.*

government information is an asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed. The PRA defines ''information'' as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). A description of the PRA provisions is given in the following paragraphs with an estimate of the annual burden. To fairly evaluate whether an information collection should be approved by OMB, the Department solicits comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Information collection for AFCARS is currently authorized under OMB number 0980–0267. This proposed rule contains information collection requirements in proposed § 1355.44 the Out-Of-Home Care Data File that the Department has submitted to OMB for its review. We propose to require that state title IV–E agencies report ICWA-related information for children who are in the Out-of-Home Care Reporting Population (§ 1355.42(a)) for the data elements proposed in § 1355.44(b) and (i).

Burden Estimate

The following are estimates.

Discussion: ACF estimates the burden and costs associated with this NPRM using the estimates from the 2020 final rule as a base by which to estimate the burden of adding the ICWA-related data elements as proposed in this NPRM. The 2020 final rule estimates can be seen beginning at 85 FR 28421. Through this comment solicitation, ACF anticipates further informing the burden estimate for an eventual final rule. This NPRM has a narrow focus in that we propose to add data elements related to ICWA's procedural protections applicable only to state title IV–E agencies. Because ICWA does not apply to tribal title IV–E agencies, they do not have to report the data elements proposed in this NPRM, thus they are not included in this burden estimate. ACF believes that the public comments on this proposal will provide valuable information regarding the cost and burden to implement the changes proposed in this NPRM. Specifically, state title IV–E agencies will be able to consider their cost and burden to implement the current AFCARS requirements finalized in 2020.

Respondents: The respondents comprise 52 state title IV–E agencies.

Recordkeeping burden: Searching data sources, gathering information, and entering the information into the system, developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements (including testing), administrative tasks associated with training personnel on the AFCARS requirements (*e.g.,* reviewing instructions, developing the training and manuals), and training personnel on AFCARS requirements. We understand that actual burden hours and costs will vary due to sophistication and capacity of information systems and availability of staff and financial resources, thus this is an average across states. We want to note though, that regardless of the size of the state's population of children in out-of-home care to whom ICWA applies, recordkeeping tasks such as training and modifications to IT systems will still need to occur because the state must be prepared to report the applicable AFCARS data elements should a child enter the reporting population.

Reporting burden: Extracting the information for AFCARS reporting and transmitting the information to ACF, which includes modifying, or developing a new data file for reporting.

Assumptions for Estimates

We made several assumptions when calculating the burden and costs:

- *Base Estimated Burden Hours:* ACF used the recordkeeping and reporting burden hours from the 2020 final rule as the base for estimating the burden hours for state title IV–E agencies resulting from the additional data elements proposed. The 2020 final rule estimated 17,076 Recordkeeping and 34 Reporting total annual burden hours for each title IV–E agency.
- *Number of children in out-of-home care:* To determine the number of children for which state title IV–E agencies will have to report the expanded ICWA-related data in the Out-of-Home Care Data File on average, ACF used the most recent FY 2021 AFCARS data available (report #29): 206,812 children entered in foster care during FY 2021. Of those, 4,622 children had a race of AI/AN reported in § 1355.44(b)(7). We used the number of children who entered foster care rather than the entire population of children in foster care because agencies will not have to collect and report all data elements on all children in foster care and using this number allows the estimate to accommodate those variances between individual child cases and circumstances.
- *Additional and Revised Data Elements for State Title IV–E Agencies:* The current Out-of-Home Care Data File contains 186 data points (see Appendix A of Technical Bulletin #20). ACF proposes to revise or add in the Out-Of-Home Care Data File approximately 45 data points related to state title IV–E agencies reporting the expanded ICWA-related information. This represents revisions to some of the current ICWA-related data elements to expand information to be reported in § 1355.44(b)(3) through (6), which is a 5 percent increase in data points for state title IV–E agencies to report for all children who enter foster care (10 new data points/186 current data points = 0.05); and proposed new data points to be added in § 1355.44(i), which is a 19 percent increase in data points for state title IV–E agencies to report for children to whom ICWA applies (35 new data points/186 current data points = 0.19). These percent increases in data points will be used in calculating the reporting and recordkeeping burden for state title IV–E agencies as a result of this NPRM. We understand from states during the implementation period of the 2020 final rule and state comments in 2018 and 2019 (see 84 FR 16573 and 85 FR 28411 respectively) that to report the new information related to ICWA, much work will need to be accomplished to examine paper or electronic case notes, court records, court orders, and other documents to locate the needed information and enter it into the case management system. We also understand that the burden associated with this bullet will vary across jurisdictions, depending on how robust the agency's electronic case management system is and the availability of documents.
- *Systems changes:* As of May 2023, 46 state title IV–E agencies have declared that they are implementing or intend to implement a Comprehensive Child Welfare Information Systems (CCWIS) (see 45 CFR 1355.50 *et seq.* for requirements). ACF recognizes that state title IV–E agencies will require revisions to electronic case management systems to meet the requirements proposed in this NPRM, regardless of CCWIS status. As more title IV–E agencies build CCWIS, ACF anticipates it will lead to more efficiency in reporting, however, we understood from previous AFCARS

rulemakings that the bulk of the information that informs ICWA-related data elements is located in state agency paper files or court documents.

• *Labor rate:* ACF assumes that there will be a mix of the following positions working to meet both the one-time and annual requirements of this proposed rule. We understand that approximately half of the state title IV–E agencies will utilize a contract to implement IT/case management systems changes to comply with an eventual final rule based on state advance planning documents approved by ACF. To inform this estimate, we also reviewed 2022 Bureau of Labor Statistics data for job roles in categories of information technology (IT) and computer programming, administrative, management, caseworkers, subject matter experts, and legal staff and used the average hourly wage for each job role. We used the job roles for social services and legal staff who may be employed by the child welfare agency and systems/engineer staff who may be employed by the agency or retained by a contract to build or revise case management systems. The wages are described below, and by averaging them, we get a labor rate of $92.

○ Office and Administrative Support Occupations (43–0000) (*e.g.,* administrative assistants, data entry, legal secretaries, government program eligibility interviewers, information and record clerks) at $21.90, Social and Community Service Managers (11–9151) at $38.13, Community and Social Service Operations (21–0000) (*e.g.,* Social Workers, Child and Family Social Workers, Counselors, Social Service Specialists) at $26.81, Social Workers (21–1020) at $28.58, Child, Family, and School Social Workers (21–2021) at $27.25, and Paralegals and Legal Assistants (23–2011) at $30.21. Computer Information and Systems Managers (11–3021) at $83.49, Computer and Mathematical Occupations (15–0000) (*e.g.,* computer and information analysts, computer programmers, and database and systems administrators) at $51.99, Information Security Analysts (15–1212) at $57.63, Computer Hardware Engineers (17–2061) at $67.71, Database Administrators (15–1242) at $49.29, Database Architects (15–1243) at $65.65, and Computer Programmers (15–1251) at $49.42. The average labor rate for these wages is $46 and to account for associated overhead costs, ACF doubled this rate, which is $92.

Calculations for Estimates

Recordkeeping Burden Estimate for State Title IV–E Agencies: Adding the burden hours estimated in the bullets below produced a total of 48,183 recordkeeping hours annually, as summarized below.

• Searching data sources, gathering information, and entering the information into the case management system for children who enter foster care, ACF estimates that this would take on average 44,875 hours annually. The 2020 final rule estimated these tasks to be 4.02 hours annually for each child who entered foster care for all 2020 final rule data points. For this NPRM, the expanded ICWA related information proposed to be added in:

○ Section 1355.44(b)(3) through (6) is a 5 percent increase in data points to report for all children who enter foster care ($4.02 \times 0.05 = 0.20$ hours). These data points apply to all children who enter foster care (0.20 hours × 206,812 children = 41,362 hours).

○ Section 1355.44(i) is a 19 percent increase in data points to report for children to whom ICWA applies ($4.02 \times 0.19 = 0.76$ hours). We are using a child's reported race as AI/AN as a proxy for a child to whom ICWA applies (0.76 hours × 4,622 children = 3,513 hours).

○ The total estimate of searching/gathering/entering information into the case management system is 48,194 annual burden hours (41,362 + 3,513 = 44,875).

• Developing or modifying standard operating procedures and IT systems to collect, validate, and verify the information and adjust existing ways to comply with the AFCARS requirements, and testing is estimated at 1,608 hours annually. The 2020 final rule estimated 6,700 hours for these tasks for all 2020 final rule data points. For this NPRM, the expanded ICWA-related information proposed to be added in:

○ Section 1355.44(b)(3) through (6) is a 5 percent increase in data points to report for all children who enter foster care ($6,700 \times 0.05 = 335$ hours).

○ Section 1355.44(i) is a 19 percent increase in data points to report for children to whom ICWA applies (6,700 × 0.19 = 1,273 annual hours).

• The total estimate of modifying IT systems and adjust existing ways to comply with the NPRM is 1,621 annual burden hours (335 + 1,273 = 1,608). Administrative tasks associated with training personnel on the NPRM requirements (*e.g.,* reviewing instructions, developing training and manuals) and training personnel on the requirements of this NPRM, we estimate will take on average 1,700 annual burden hours. We understand that training hours will vary depending on the size of the agency's workforce needing training, the current training conducted regarding ICWA, therefore ACF assumes that implementing the data elements proposed here will be incorporated in ongoing training efforts. The 2020 final rule estimated 7,086 hours for all 2020 final rule data points. For this NPRM, the information proposed to be added in:

○ Section 1355.44(b)(3) through (6) is a 5 percent increase in data points to report for all children who enter foster care ($7,086 \times 0.05 = 354$ hours).

○ Section 1355.44(i) is a 19 percent increase in data points to report for children to whom ICWA applies ($7,086 \times 0.19 = 1,346$ hours).

○ The total estimate of administrative tasks associated with training personnel to comply with the NPRM is 1,714 annual burden hours (354 + 1,346 = 1,700).

Thus, the total recordkeeping burden estimate is 44,875 searching and gathering information + 1,608 developing or modifying IT systems + 1,700 administrative tasks = 48,183 hours.

Reporting Burden Estimate for State Title IV–E Agencies: We estimate that extracting the additional ICWA-related information for AFCARS reporting and transmitting the information to ACF would take on average eight hours annually. The 2020 final rule estimated reporting would take 34 hours annually extracting and reporting information for all 2020 final rule data points. For this NPRM, the expanded ICWA-related information proposed to be added in:

• Section 1355.44(b)(3) through (6) is a 5 percent increase in data points to report for all children who enter foster care ($34 \times 0.05 = 2$ hours).

• Section 1355.44(i) is a 19 percent increase in data points to report for children to whom ICWA applies ($34 \times 0.19 = 6$ hours).

• The total estimate of reporting the expanded ICWA related information to comply with the NPRM is eight annual burden hours (2 + 6 = 8).

Collection—AFCARS for State Title IV–E Agencies	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours for NPRM
Recordkeeping	52	2	463.30	48,183
Reporting	52	2	0.08	8
Total				48,191

Annualized Cost to the Federal Government

Federal reimbursement under title IV–E will be available for a portion of the costs that state title IV–E agencies will incur because of the revisions proposed in this NPRM and actual costs will vary, depending on each agency's cost allocation, information system, and other factors. If this proposed regulatory action becomes final, ACF estimates that it would cost the Federal government approximately $2,216,786. For this estimate, we used the 50 percent FFP rate and because the FFP rate used in these estimates is 50 percent, we estimate the costs for Federal and non-Federal to be the same.

Collection—AFCARS	Total annual burden hours	Average hourly labor rate	Total cost	Estimate federal costs (50% FFP)
State Title IV–E Agencies				
Recordkeeping	48,183	$92	$4,432,836	$2,216,418
Reporting	8	92	736	368
Total			4,433,572	2,216,786

In the above estimates, ACF acknowledges the following: (1) ACF has used average figures for state title IV–E agencies of very different sizes and of which, some may have larger populations of children served than other agencies, and (2) these are rough estimates based on the information available to ACF. We welcome comments on the burden and costs of this NPRM in accordance with section IV of this NPRM.

OMB is required to make a decision concerning the collection of information contained in this regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB or the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202–395–6974 or by email to *OIRA_submission@omb.eop.gov*. Please mark faxes and emails to the attention of the desk officer for ACF.

VII. Tribal Consultation Statement

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments,* requires agencies to consult with Indian tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Similarly, ACF's Tribal Consultation Policy says that consultation is triggered for a new rule adoption that significantly affects tribes, meaning the new rule adoption has substantial direct effects on one on more Indian Tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This proposed rule does not meet either standard for consultation. Executive Order 13175 does not apply to this NPRM because it does not impose any burden or cost on tribal title IV–E agencies, nor does it impact the relationship or distribution of power between the Federal Government and Indian Tribes. ICWA does not apply to tribal title IV–E agencies, therefore, they do not have to report the data elements proposed in this NPRM. However, we have received tribal input on proposing ICWA-related data elements. Prior to publication of this NPRM, the Department addressed collecting ICWA-related information in AFCARS at the Secretary's Tribal Advisory Council (STAC) meetings in 2022. In September 2022, ACF updated the STAC of ACF's intention to revise AFCARS to propose ICWA-related data elements similar to what was in the 2016 final rule. The members of the STAC have consistently expressed support for restoring ICWA-related data elements to AFCARS. We look forward to engaging in consultation with tribes during the comment period of this NPRM and to receiving their comments on this proposal.

Jeff Hild, Acting Assistant Secretary of the Administration for Children & Families, approved this document on February 9, 2024.

List of Subjects in 45 CFR Part 1355

Administrative costs, Adoption Assistance, Child welfare, Fiscal requirements (title IV–E), Grant programs—social programs, Statewide information systems.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: February 14, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, ACF proposes to amend 45 CFR part 1355 as follows:

PART 1355—GENERAL

■ 1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.,* 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1302.

■ 2. Amend § 1355.43 by revising paragraphs (b)(1) and (2) and removing paragraph (b)(3) to read as follows:

§ 1355.43 Data reporting requirements.

* * * * *

(b) *Out-of-home care data file.* A title IV–E agency must report the

information required in § 1355.44 pertaining to each child in the out-of-home care reporting population, in accordance with the following:

(1) The title IV–E agency must report the most recent information for the applicable data elements in § 1355.44(a), (b), and (c).

(2) The title IV–E agency must report the most recent information and all historical information for the applicable data elements in § 1355.44(d) through (i).

* * * * *

■ 3. Amend § 1355.44 by revising paragraphs (b)(3) through (6), and adding paragraph (i) to read as follows:

§ 1355.44 Out-of-home care data file elements.

* * * * *

(b) * * *

(3) *Researching reason to know a child is an ''Indian Child'' as defined in the Indian Child Welfare Act (ICWA).* For state title IV–E agencies only: Indicate whether the state title IV–E agency researched whether there is reason to know that the child is an Indian child as defined in ICWA. Complete each paragraph (b)(3)(i) through (vi) of this section.

(i) Indicate whether the state title IV–E agency inquired with the child's biological or adoptive mother. Indicate ''yes,'' ''no'' or ''the biological or adoptive mother is deceased.''

(ii) Indicate whether the state title IV–E agency inquired with the child's biological or adoptive father. Indicate ''yes,'' ''no,'' or ''the biological or adoptive father is deceased.''

(iii) Indicate whether the state title IV–E agency inquired with the child's Indian custodian if the child has one. Indicate ''yes,'' ''no,'' or ''child does not have an Indian custodian.''

(iv) Indicate whether the state title IV–E agency inquired with the child's extended family. Indicate ''yes'' or ''no.''

(v) Indicate whether the state title IV–E agency inquired with the child. Indicate ''yes'' or ''no.''

(vi) Indicate whether the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village. Indicate ''yes'' or ''no.''

(4) *Child's tribal membership and reason to know.* For state title IV–E agencies only:

(i) Indicate whether the child is a member of or eligible for membership in a federally recognized Indian tribe. Indicate ''yes,'' ''no,'' or ''unknown''.

(ii) If the state title IV–E agency indicated ''yes'' in paragraph (b)(4)(i) of this section, indicate all federally recognized Indian tribe(s) that may potentially be the Indian child's tribe(s).

(iii) Indicate whether the state title IV–E agency knows or has reason to know, that the child is an Indian child as defined in ICWA. Indicate ''yes'' or ''no.'' If the state title IV–E agency indicates ''yes,'' then it must complete paragraph (b)(4)(iv). If the state title IV–E agency indicates ''no,'' then it must leave paragraph (b)(4)(iv) blank.

(iv) Indicate the date that the state title IV–E agency first discovered the information indicating the child is or may be an Indian child as defined in ICWA.

(5) *Notification.* For state title IV–E agencies only:

(i) Indicate whether the Indian child's tribe(s) was sent legal notice prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate ''yes'' or ''no.'' If the state title IV–E agency indicates ''yes,'' then it must complete paragraph (b)(5)(ii). If the state title IV–E agency indicates ''no,'' then it must leave paragraph (b)(5)(ii) blank.

(ii) Indicate the Indian tribe(s) that were sent notice as required in ICWA at 25 U.S.C. 1912(a).

(iii) Indicate whether the Indian child's parent or Indian custodian was sent legal notice prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate ''yes'' or ''no.''

(6) *Application of ICWA.*

(i) Indicate whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 CFR 23.107(b)(2). Indicate ''yes, ICWA applies,'' ''no, ICWA does not apply,'' or ''no court determination.'' If the state title IV–E agency indicates ''yes, ICWA applies,'' then it must complete paragraphs (b)(6)(ii) and (iii) and paragraph (i) of this section; otherwise leave blank.

(ii) Indicate the date that the court determined that ICWA applies or determined to apply ICWA in accordance with 25 CFR 23.107(b)(2).

(iii) Indicate the Indian tribe that the court determined is the Indian child's tribe for ICWA purposes.

* * * * *

(i) *Data elements related to ICWA.* Reporting information in paragraph (i) is for state title IV–E agencies only. Report information in paragraph (i) only if the state title IV–E agency indicated ''yes, ICWA applies'' in paragraph (b)(6)(i) of this section. Otherwise, the state title IV–E agency must leave paragraph (i) of this section blank.

(1) *Request to transfer to tribal court.*

(i) Indicate whether the child's case record indicated a request to transfer to tribal court for each removal date reported in paragraph (d)(1) of this section. Indicate ''yes'' or ''no.'' If the state title IV–E agency indicates ''yes,'' the state title IV–E agency must complete paragraph (ii) of this section. If the state title IV–E agency indicates ''no,'' the state title IV–E agency must leave paragraph (ii) of this section blank.

(ii) Indicate whether the child's case record indicated that there was a denial of the request to transfer to tribal court. Indicate ''yes'' or ''no.''

(2) *Involuntary termination/modification of parental rights under ICWA.* If the state title IV–E agency indicated ''involuntary'' in paragraph (c)(5) of this section, the state title IV–E agency must complete paragraphs (i)(2)(i) through (iii) of this section. Otherwise, the state title IV–E agency must leave paragraphs (i)(2)(i) through (iii) of this section blank.

(i) Indicate whether the state court found beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f). Indicate ''yes'' or ''no.''

(ii) Indicate whether the court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses in accordance with 25 U.S.C. 1912(f). Indicate ''yes'' or ''no.''

(iii) Indicate whether, prior to terminating parental rights, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d). Indicate ''yes'' or ''no.''

(3) *Voluntary termination/modification of parental rights under ICWA.* If the state title IV–E agency indicated ''voluntary'' in paragraph (c)(5) of this section, indicate whether the consent to termination of parental or Indian custodian rights was:

(i) Executed in writing. Indicate ''yes'' or ''no.''

(ii) Recorded before a court of competent jurisdiction. Indicate ''yes'' or ''no.''

(iii) Accompanied with a certification by the court that the terms and consequences of consent were explained on the record in detail and were fully understood by the parent or Indian custodian in accordance with 25 CFR 23.125(a) and (c). Indicate ''yes'' or ''no.''

(4) *Removals under ICWA.* For each removal date reported in paragraph (d)(1) of this section:

(i) Indicate whether the court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). Indicate ''yes'' or ''no.''

(ii) Indicate whether the evidence presented for foster care placement as indicated in paragraph (i)(4)(i) of this section included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). Indicate ''yes'' or ''no.''

(iii) Indicate whether the evidence presented for foster care placement as indicated in paragraph (i)(4)(i) indicates that prior to each removal reported in paragraph (d)(1) of this section that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d). Indicate ''yes'' or ''no.''

(5) *Available ICWA foster care and pre-adoptive placement preferences.* Indicate which foster care or pre-adoptive placements, (which are reported in paragraph (e)(1) of this section and meet the placement preferences of ICWA in 25 U.S.C. 1915(b) and (c)) were willing to accept placement for the child. Indicate in each paragraph (i)(5)(i) through (v) of this section ''yes,'' ''no,'' or ''not applicable.'' If the Indian child's tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c), the state title IV–E agency must complete paragraph (i)(5)(v) and leave paragraph (i)(5)(i) through (iv) blank.

(i) A member of the Indian child's extended family.

(ii) A foster home licensed, approved, or specified by the Indian child's tribe.

(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(iv) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(v) A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe.

(6) *Foster care and pre-adoptive placement preferences under ICWA.* Indicate which foster care or pre-adoptive placements, reported in paragraph (e)(1) of this section, meet the placement preferences of ICWA in 25 U.S.C. 1915(b) and (c) by indicating with whom the Indian child is placed. Indicate ''a member of the Indian child's extended family,'' ''a foster home licensed, approved, or specified by the Indian child's tribe,'' ''an Indian foster home licensed or approved by an authorized non-Indian licensing authority,'' ''an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs,'' ''a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe'' or ''placement does not meet ICWA placement preferences.'' If the state IV–E agency indicated ''placement does not meet ICWA placement preferences,'' then the state IV–E agency must complete paragraph (i)(7). Otherwise, the state title IV–E agency must leave paragraph (i)(7) blank.

(7) *Good cause under ICWA, foster care.* Indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences in accordance with 25 U.S.C. 1915(b) or to depart from the placement preferences of the Indian child's tribe in accordance with 25 U.S.C. 1915(c). Indicate ''yes'' or ''no.'' If the state title IV–E agency indicated ''yes,'' then the state title IV–E agency must indicate the basis for good cause in paragraph (i)(8) of this section. If the state title IV–E agency indicated ''no,'' then the state title IV–E agency must leave paragraph (i)(8) blank.

(8) *Basis for good cause, foster care.* If the state title IV–E agency indicated ''yes'' to paragraph (i)(7), indicate the state court's basis for determining good cause to depart from ICWA placement preferences by indicating ''yes'' or ''no'' in each paragraph (i)(8)(i) through (v) of this section:

(i) Request of one or both of the Indian child's parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.

(iv) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

(v) The presence of a sibling attachment that can be maintained only through a particular placement.

(9) *Active efforts.* Indicate whether the state title IV–E agency made active efforts to prevent the breakup of the Indian family in accordance with 25 U.S.C 1912(d) and 25 CFR 23.2. Indicate ''yes'' or ''no.''

(10) *Available ICWA adoptive placements.* If the state title IV–E agency indicated the child exited to adoption in paragraph (g)(3) of this section, indicate which adoptive placements that meet the placement preferences in ICWA at 25 U.S.C. 1915(a) and (c) were willing to accept placement. Indicate in each paragraph (i)(10)(i) through (iv) of this section ''yes,'' ''no,'' or ''not applicable.'' If the Indian child's tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c), the state title IV–E agency must complete paragraph (i)(10)(iv) and leave paragraph (i)(10)(i) through (iii) blank.

(i) A member of the Indian child's extended family.

(ii) Other members of the Indian child's tribe.

(iii) Other Indian families.

(iv) A placement that complies with the order of preference placements established by an Indian child's tribe.

(11) *Adoption placement preferences under ICWA.* If the state title IV–E agency indicated the child exited to adoption in paragraph (g)(3) of this section, indicate whether the adoptive placement meets the adoptive placement preferences of ICWA in 25 U.S.C. 1915(a) and (c) by indicating with whom the Indian child is placed. Indicate ''a member of the Indian child's extended family,'' ''other members of the Indian child's tribe,'' ''other Indian families,'' ''a placement that complies with the order of preference for adoptive placements established by an Indian child's tribe,'' or ''placement does not meet ICWA placement preferences.'' If the state IV–E agency indicated ''placement does not meet ICWA placement preferences,'' then the state IV–E agency must complete paragraph (i)(12); otherwise, leave paragraph (i)(12) blank.

(12) *Good cause under ICWA, adoption.* If the state title IV–E agency indicated ''placement does not meet ICWA placement preferences'' in paragraph (i)(11), indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA adoptive placement preferences under 25 U.S.C. 1915(a) or to depart from the adoptive placement preferences of the Indian child's tribe

under 25 U.S.C. 1915(c). Indicate ''yes'' or ''no.'' If the state title IV–E agency indicated ''yes,'' then the state title IV–E agency must indicate the basis for good cause in paragraph (i)(13) of this section. If the state title IV–E agency indicated ''no,'' then the state title IV–E agency must leave paragraph (i)(13) blank.

(13) *Basis for good cause, adoption.* If the state title IV–E agency indicated ''yes'' in paragraph (i)(16), indicate the state court's basis for determining good cause to depart from ICWA adoptive placement preferences by indicating ''yes'' or ''no'' in each paragraph (i)(13)(i) through (v) of this section.

(i) Request of one or both of the child's parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the adoptive placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.

(iv) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the adoptive placement preferences live.

(v) The presence of a sibling attachment that can be maintained only through a particular adoptive placement.

[FR Doc. 2024–03373 Filed 2–22–24; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 240213–0046]

RIN 0648–BM66

Atlantic Highly Migratory Species; Bluefin Tuna General Category Effort Controls and Related Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to codify a schedule of restricted-fishing days (RFDs) for the 2024 fishing year and subsequent fishing years; reestablish a General category default retention limit for large medium or giant bluefin tuna (BFT) on open days; and make clarifications to the BFT dealer regulations and the definition of a bluefin statistical document (BSD) tag. This proposed action is necessary to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time period subquotas. Lastly, this proposed action would clarify existing regulations to ensure better understanding and compliance by General category quota participants.

DATES: Written comments may be submitted via *https://www.regulations.gov* and must be received by March 25, 2024. Comments may also be submitted at a public hearing or webinar. NMFS will hold a public hearing via conference call and webinar for this proposed rule on March 19, 2024, from 2 p.m. to 4 p.m., Eastern Time. Information for registering and accessing the webinar can be found at *https://www.fisheries.noaa.gov/action/proposed-rule-set-general-category-effort-controls-and-clarify-related-atlantic-bluefin-tuna.* Requests for sign language interpretation or other auxiliary aids should be directed to Larry Redd, Jr., (see **FOR FURTHER INFORMATION CONTACT** section) at least 7 days prior to the meeting. The public is reminded that NMFS expects participants at conference calls and webinars to conduct themselves appropriately. At the beginning of each conference call and webinar, the moderator will explain how the conference call and webinar will be conducted and how and when participants can provide comments. NMFS will structure the conference call and webinar so that all members of the public will be able to comment. Participants are expected to respect the ground rules, and those that do not may be asked to leave the conference calls and webinars.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2024–0021, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and type ''NOAA–NMFS–2024–0021'' in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments. Written comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Larry Redd, Jr., or Erianna Hammond (see **FOR FURTHER INFORMATION CONTACT** section).

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* or Erianna Hammond, *erianna.hammond@noaa.gov,* at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.23 describes the daily retention limits for BFT including retention limits on RFDs. Section 635.27 divides the U.S. BFT quota, established by the United States and other members of the International Commission for the Conservation of Atlantic Tunas (ICCAT), among the various domestic fishing categories per the allocations established in the FMP and its amendments. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The BFT fishery is a quota-managed fishery, and the annual U.S. BFT quota is established by binding recommendations of ICCAT. The U.S. BFT quota established through that process is implemented domestically through rulemaking and allocated among six quota categories (General, Angling, Harpoon, Longline, Trap, and Reserve). This proposed rule considers actions specific to the General category