

LEGISLATIVE SUMMARY SHEET

Tracking No. 0196-18

DATE: June 8, 2018

SUBJECT AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'IYATI' COMMITTEES; SUPPORTING AS THE NAVAJO NATION POSITION, OPPOSING THE STREAMLINING OR ELIMINATION OF THE 2016 ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM-INDIAN CHILD WELFARE ACT (AFCARS-ICWA) DATA ELEMENTS, THE PROPOSED TWO YEAR DELAY OF IMPLEMENTATION AND OBJECTING TO THE LACK OF SUFFICIENT TRIBAL CONSULTATION BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES

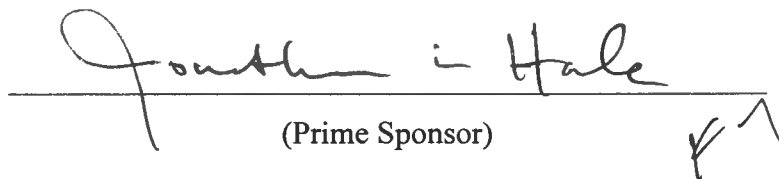
PURPOSE: The purpose of this legislation is to approve the Navajo Nation official position with respect to certain regulatory and procedural changes proposed by the U.S. Department of Health and Human Services.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 6/8/2018 6:10 PM
Posting End Date: 6/13/2018
Eligible for Action: 6/14/2018

Health, Education & Human Services Committee
Thence
Naa'bik'iyáti' Committee

PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018
INTRODUCED BY

Jonathan i Hale
(Prime Sponsor) 

TRACKING NO. 0196-18

AN ACTION
RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND
NAABIK'IYATI' COMMITTEES; SUPPORTING AS THE NAVAJO NATION
POSITION, OPPOSING THE STREAMLINING OR ELIMINATION OF THE 2016
ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM-INDIAN
CHILD WELFARE ACT (AFCARS-ICWA) DATA ELEMENTS, THE PROPOSED
TWO YEAR DELAY OF IMPLEMENTATION AND OBJECTING TO THE LACK
OF SUFFICIENT TRIBAL CONSULTATION BY THE U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND
FAMILIES

Whereas:

- A. The Health, Education and Human Services Committee (HEHSC) is a standing committee of the Navajo Nation Council. The Committee is empowered to review and recommend resolutions regarding certain matters, including health, education and social services. 2 N.N.C. §§ 164 (A)(9), 400 (A), 401 (B)(6)(a) (2012); see also C0-45-12.
- B. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council. Among other duties and responsibilities, it "coordinate[s] all federal, county and state programs with other standing committees and branches of the Navajo Nation

1 government to provide the most efficient delivery of services to the Navajo Nation. 2
2 N.N.C. §701(A)(4).

3 C. The Navajo Nation has a government-to-government relationship with the Federal
4 Government. Through treaty, the Federal government has trust responsibilities to the
5 Navajo Nation.

6 D. The U.S. Department of Health and Human Services, Administration for Children and
7 Families (ACF) has announced through Advanced Notice of Proposed Rulemaking its
8 intention to streamline or eliminate the 2016 Adoption and Foster Care Automated
9 Reporting System (AFCARS) data elements as the relate to the Indian Child Welfare
10 Act of 1978 (ICWA) and delay the implementation for two (2) years. See Exhibit A.

11 E. The Navajo Nation Division of Social Services opposes this streamlining or possible
12 elimination of these data elements, the proposed two (2) year implementation delay
13 and the lack of meaningful tribal consultation. .

14 F. The Health Education and Human Services Committee finds it to be in the best
15 interest of the Navajo Nation to concur with the position recommendations of the
16 Division of Social Services.

17 G. The Naabik'iyáti' Committee finds it to be in the best interest of the Navajo Nation to
18 support the Navajo Nation Division of Social Services in its opposition to the changes
19 proposed by the U.S. Department of Health and Human Services as described in
20 Exhibit A.

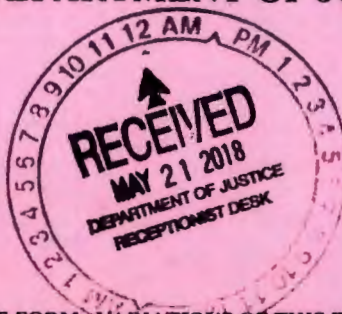
21
22 **Therefore Be It Resolved**

23 The Navajo Nation hereby supports the Navajo Nation Division of Social Services in
24 its opposition to the changes proposed by the U.S. Department of Health and Human
25 Services relative to the streamlining or elimination of the ADCARS-ICWA data
26 elements, the proposed two (2) year implementation delay and the lack of meaningful
27 tribal consultation as described in Exhibit A.



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



☐ RESUBMITTAL

DOJ	
05/21/18 1201p	
DATE / TIME	
☐ 7 Day Deadline	
DOC #:	010330
SAS #:	
UNIT:	H59N

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST:	5/21/2018	DIVISION:	Division of Social Services
CONTACT NAME:	Angela Davidson	DEPARTMENT:	Executive Administration
PHONE NUMBER:	(928) 871-6851	E-MAIL:	adavidson@navajo-nsn.gov

TITLE OF DOCUMENT: *Adoption/Foster Care Analysis*

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 5/21 @ 1:07 REVIEWING ATTORNEY/ADVOCATE: KM

DATE TIME OUT OF UNIT: 5/22 @ 1130 LS

DOJ ATTORNEY / ADVOCATE COMMENTS

Recommend putting this in letter format. Legally sufficient.

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
		Xandis Martin	5/21/18 4:42pm

DOJ Secretary Called: Nicole for Document Pick Up on 5/22 at 1130 By: Smith

PICKED UP BY: (Print) DATE / TIME:

Document No. 010330Date Issued: 05/21/2018**SECTION 164 REVIEW FORM**Title of Document: Adoption/Foster Care Analysis Contact Name: DAVIDSON, ANGELAProgram/Division: DIVISION OF SOCIAL SERVICESEmail: adavidson@navajo-nsn.gov Phone Number: 871-6851Division Director Approval for 164A: *Angela Davidson* 5/21/18

Check document category: only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

☒	Statement of Policy or Positive Law:		Sufficient	Insufficient
	1. OAG: <u><i>Angela Davidson</i></u>	Date: <u>5/21/18</u>	☒	☐
☐	IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)			
	1. OMB: _____	Date: _____	☐	☐
	2. OOC: _____	Date: _____	☐	☐
	3. OAG: _____	Date: _____	☐	☐

Section 164(B) Final approval rests with the President of the Navajo Nation

☐	Grant/Funding Agreement or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OMB: _____	Date: _____	☐	☐
	3. OOC: _____	Date: _____	☐	☐
	4. OAG: _____	Date: _____	☐	☐
☐	Subcontract/Contract expending or receiving funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. BRD: _____	Date: _____	☐	☐
	3. OMB: _____	Date: _____	☐	☐
	4. OOC: _____	Date: _____	☐	☐
	5. OAG: _____	Date: _____	☐	☐
☐	Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OAG: _____	Date: _____	☐	☐
☐	M.O.A. or Letter of Assurance expending or receiving funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OMB: _____	Date: _____	☐	☐
	3. OOC: _____	Date: _____	☐	☐
	4. OAG: _____	Date: _____	☐	☐



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

Submitted by: The Navajo Nation

U.S. Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1355

RIN 0970-AC72

Adoption and Foster Care Analysis and Reporting System

Federal Register/Vol. 38, No. 51 (March 15, 2018), 11449-11450

I) Generally

Section 479 of the Social Security Act mandates that Health and Human Services collect national, uniform, and reliable information on children in state care. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

The Final Rule, which ACF promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom the Indian Child Welfare Act (ICWA) applies and historical data on

children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act.

II) The Navajo Nation does not support the streamlining or elimination of the 2016 AFCARS-ICWA data elements.

- The Navajo Nation supported, and continues to support, the AFCARS ICWA Data Elements, referred to as 2016 *Adoption and Foster Care Automated Reporting System (AFCARS)* data elements related to the *Indian Child Welfare Act of 1978*.
- The Navajo Nation opposes the Administration for Children and Families' (ACF) "streamlining" or elimination of ICWA elements pursuant to the *Advance Notice of Proposed Rulemaking*.
- The Navajo Nation does not support ACF's proposal to delay the implementation for 2 years, or the "Compliance date" as proposed under *Notice of Proposed Rulemaking; delay of compliance and effective dates*, Federal Register/Vol. 38, No. 51 (March 15, 2018), 11450-11451.

Reasoning:

- The Navajo Nation is one of the largest AI/AN tribes, according to the U.S. Census.
- Navajo families move off the reservation to seek jobs, education, and other opportunities to cities, towns and other parts of the United States. At times, while off the reservation these families find themselves in circumstances where their children are removed from their care and placed into a state's child welfare systems.
- Although the Navajo Nation Division of Social Services receives proper notice from the states regarding Navajo children in state custody and begins to coordinate with those states. We still believe there are children in the state custody who have not been properly identified as Navajo and thus the Indian Child Welfare Act may not be followed in those cases. Therefore, the Navajo Nation is not able to coordinate or provide recommendations for a case concerning a Navajo child. In

addition, this impacts the children and families because of the disconnect from their family and their tribe.

- As of the end of April 2018, the Navajo Nation had 590 ICWA cases that involved 1,173 children in those cases. Case coordination happened with 28 states across the country. This is the Navajo Nation's ICWA data. The concern with some states is that the state child welfare agency does not ask the parents whether they are members of an Indian tribe, whether the parents have their tribal enrollment numbers, and whether the family are domiciled on the Navajo Nation or not, among other relevant questions.
- Navajo children placed in out of home care have unique needs that can be best met and addressed by the Navajo Nation and extended family members, e.g., language and knowledge of cultural oral stories tied to the child's clan; identifying clan relationships and connections; or knowing and identifying community of origin to reconnect to among, etc.
- When the *2016 AFCARS-ICWA data elements* are implemented it will help the states, federal and tribal governments to work together on these cases. If these elements are "streamlined" or eliminated, as proposed, the Navajo Nation is concerned that the data to be collected on Navajo children through the states will not be comprehensive and continue to be fragmented. Therefore, as a system, we will not be able to advance the well-being of Navajo children and families. This is what we have today---fragmented data on Indian children that is not comprehensive or specific to Navajo.
- Having specific data elements will allow for ACF and states to identify targeted training needs on the ICWA for their staff. In addition, this will allow for the states to partner with respective tribes in their states on developing training needs that may help state staff on how best to coordinate efforts on ICWA cases.
- Having specific data elements will not only assist ACF in forming future national policies on best practices with tribes on ICWA cases, but it will also benefit tribes in forming their own policies. Furthermore, ACF will benefit overall, as ACF may use the data elements to benefit overall policy development for TANF, Head Start, Childcare, and other DHHS programs.
- In redoing the *AFCARS-ICWA data elements* the Children's Bureau believes the public did not thoroughly review for burdensome pursuant to Executive Order 13777.

- The Navajo Nation requests that the ACF consider that the burden that has been unfairly placed on AI/AN Tribes and families for generations.
- The federal government has a trust responsibility to Tribes and it is time it removes its traditions of implementing burdensome policies that are detrimental to the tribes and Indian people.
- Moreover, the ACF is saying that they do not have authority over the Indian Child Welfare Act as the U.S. Department of Interior (DOI) has that regulatory authority. This argument is not correct and misplaced. The DOI – through the Bureau of Indian Affairs – does provide funding to tribes for ICWA, not the states. Tribes use this money to fund their tribal social services which supports their cases. The funds are not used by the states. The ACF is not being asked to change that or take over when it implements the *2016 AFCARS – ICWA data elements*. ACF is requiring States to collect data concerning Indian children who are in their care. This is a misguided argument. Rather the data should complement one another.

III) Lack of Tribal Consultation

Like many of the other tribes, the Navajo Nation has requested updates on the implementation of the *2016 AFCARS – ICWA data elements* in 2017, at the Secretary's Tribal Advisory Committee (STAC) meetings. Finally, after several requests, ACF scheduled the Tribal Consultation on May 15 and May 16, 2018 via teleconference, for 1.5 hours each day.

The Navajo Nation has serious concerns and questions whether this meets the true intent of tribal consultation as this will be conducted by telephone for a limited time period. Most recently, at the May 9-10, 2018 STAC meeting, the Navajo Nation requested for an in-person tribal consultation meeting. However, we have not received this and the Navajo Nation continues to make this request.



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

May 24, 2018

Kathleen McHugh, Director of Policy
U.S Department of Health and Human Services
Administration for Children and Families
330 C Street, S.W.
Washington, DC 20024
Via email: CBComments@acf.hhs.gov

RE: Adoption and Foster Care Analysis and Reporting System

Dear Director McHugh:

This letter is in reference to U.S. Department of Health and Human Services, Administration for Children and Families (ACF), 45 CFR Part 1355, RIN 0970-AC72, Adoption and Foster Care Analysis and Reporting System (AFCARS), Federal Register/Vol. 38, No. 51 (March 15, 2018), 11449-11450 (attached).

I) Generally

Section 479 of the Social Security Act mandates that Health and Human Services collect national, uniform, and reliable information on children in state care. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

The Final Rule, which ACF promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom the Indian Child Welfare Act (ICWA) applies and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act.

II) The Navajo Nation does not support the streamlining or elimination of the 2016 AFCARS-ICWA data elements.

- The Navajo Nation supported, and continues to support, the AFCARS ICWA Data Elements, referred to as 2016 Adoption and Foster Care Automated Reporting System (AFCARS) data elements related to the Indian Child Welfare Act of 1978.
- The Navajo Nation opposes the Administration for Children and Families' (ACF) "streamlining" or elimination of ICWA elements pursuant to the Advance Notice of

Proposed Rulemaking.

- The Navajo Nation does not support ACF's proposal to delay the implementation for 2 years, or the "Compliance date" as proposed under Notice of Proposed Rulemaking; delay of compliance and effective dates, Federal Register/Vol. 38, No. 51 (March 15, 2018), 11450-11451 (see also attached).

Reasoning:

- The Navajo Nation is one of the largest AI/AN tribes, according to the U.S. Census. It is also surrounded by three states (Arizona, New Mexico and Utah).
- Navajo families move off the reservation to seek jobs, education, and other opportunities to cities, towns and other parts of the United States. At times, while off the reservation these families find themselves in circumstances where their children are removed from their care and placed into a state's child welfare systems.
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- As of the end of April 2018, the Navajo Nation had 590 ICWA cases that involved 1,173 children in those cases. Case coordination happened with 28 states across the country. This is the Navajo Nation's ICWA data. The concern with some states is that the state child welfare agency does not ask the parents whether they are members of an Indian tribe, whether the parents have their tribal enrollment numbers, and whether the family are domiciled on the Navajo Nation or not, among other relevant questions.
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- Having specific data elements will allow for ACF and states to identify targeted training needs on the ICWA for their staff. In addition, this will allow for the states to partner with respective tribes in their states on developing training needs that may help state staff on how best to coordinate efforts on ICWA cases.
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- The Navajo Nation requests that the ACF consider that the burden that has been unfairly placed on AI/AN Tribes and families for generations.
- The federal government has a trust responsibility to Tribes and it is time it removes its traditions of implementing burdensome policies that are detrimental to the tribes and Indian people.
- Moreover, the ACF is saying that they do not have authority over the Indian Child Welfare Act as the U.S. Department of Interior (DOI) has that regulatory authority. This argument is not correct and misplaced. The DOI – through the Bureau of Indian Affairs – does provide funding to tribes for ICWA, not the states. Tribes use this money to fund their tribal social services which supports their cases. The funds are not used by the states. The ACF is not being asked to change that or take over when it implements the 2016 AFCARS – ICWA data elements. ACF is requiring States to collect data concerning Indian children who are in their care. This is a misguided argument. Rather the data should complement one another.

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Conclusion

If there are any questions, Terrelene G. Massey, Esq., Executive Director of the Navajo Division of Social Services may be contacted at 928.871.6851. Thank you.

Sincerely,

Russell Begaye, *President*
THE NAVAJO NATION

EPA has created for this rulemaking. The docket for this petition is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

PP 6F8521. (EPA-HQ-OPP-2015-0787). K-I Chemical USA, Inc., 11 Martine Ave., Suite 970, White Plains, NY 10606, requests to establish tolerances in 40 CFR 180.659 for residues of the herbicide, pyroxasulfone (3-[(5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-yl)methylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole), and its metabolites in or on Crop Subgroup 1C, tuberous and corm vegetables (except granular/flakes and chips) at 0.05 part per million (ppm); Crop Subgroup 3-07, bulb vegetables at 0.15 ppm; potatoes, granular/flakes at 0.3 ppm and potato chips at 0.06 ppm. The high performance liquid chromatography/triple quadrupole mass spectrometry (LC/MS/MS) methods has been proposed to enforce the tolerance expression for pyroxasulfone. Contact: RD.

Authority: 21 U.S.C. 346a.

Dated: February 28, 2018.

Michael L. Goodis,
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 2018-05291 Filed 3-14-18; 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-AC72

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),
Department of Health and Human
Services (HHS).

ACTION: Advance notice of proposed
rulemaking.

SUMMARY: ACF is seeking public suggestions, in particular from state and tribal title IV-E agencies and Indian tribes and tribal consortiums and other stakeholders, for streamlining the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and removing any undue burden related to reporting AFCARS.

DATES: Comments on this advance notice of proposed rulemaking must be received by June 13, 2018.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by one 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.

- **Mail:** Written comments may be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please be aware that mail sent in response to this ANPRM may take an additional 3 to 4 days to process due to security screening of mail.

Instructions: When commenting, please identify the topic, data element, or issue to which your comment pertains. All submissions received must include the agency name and docket number or Regulatory Information Number for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Division of Policy, Children's Bureau at (202) 401-5789.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking (ANPRM) has two sections: *Background* that describes the authority on which the ANPRM is based and establishes the rationale for its issuance, and *Questions for Comment* wherein we solicit comment on the AFCARS regulations.

I. Background

Section 479 of the Social Security Act (the Act) requires HHS to regulate a data collection system for national adoption and foster care data that provides comprehensive national information on the following:

- Demographic characteristics of adopted and foster children and their biological and adoptive or foster parents;
- Status and characteristics of the foster care population;

- Number and characteristics of children entering and exiting foster care, children adopted or for whom adoptions have been terminated, and children placed in foster care outside of the state which has placement and care responsibility for them;

- Extent and nature of assistance provided by government programs for foster care and adoption and the characteristics of the children that receive the assistance; and

- Number of foster children identified as sex trafficking victims before entering and while in foster care.

Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

We published a final rule to revise the AFCARS regulations on December 14, 2016 (81 FR 90524) and required title IV-E agencies to continue to report AFCARS data in accordance with § 1355.40 and the appendix to part 1355 until September 30, 2019 and provided two fiscal years for title IV-E agencies to comply with §§ 1355.41 through 1355.47 of the final rule. In a notice of proposed rulemaking published elsewhere in this issue of the *Federal Register*, we propose to delay the compliance dates in regulations and the effective date of revisions to the AFCARS regulations made in the final rule from October 1, 2019, to October 1, 2021.

The final rule was a culmination of two notices of proposed rulemaking (issued January 11, 2008 (73 FR 2082) and February 9, 2015 (80 FR 7132)) and a supplemental notice of proposed rulemaking (issued April 7, 2016 (81 FR 20283)). The final rule updated the AFCARS regulations to include child welfare legislative changes that occurred since 1993, included data elements related to the Indian Child Welfare Act of 1978 (ICWA), and implemented fiscal penalties for noncompliant AFCARS data.

On February 24, 2017, the President issued Executive Order 13777 on Enforcing the Regulatory Reform Agenda to lower regulatory burdens on the American people. In response to the President's direction that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, we have identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits. We are specifically

soliciting comments on the data elements and their associated burden through this ANPRM.

Public comments to this ANPRM will allow us to assess whether and how we can potentially reduce burden on title IV-E agencies to report AFCARS data while still adhering to the requirements of section 479 of the Act and collecting useful data that will inform efforts to improve the child welfare system. We encourage state and tribal title IV-E agencies that did not previously comment to do so now. Some state title IV-E agencies provided in their previous comments specific information on compliance cost and burden estimates; however, we received too few estimates to reference for calculating the cost and burden associated with this final rule. We encourage agencies to be as specific as possible when commenting on this ANPRM. We will take comments and estimates into consideration in revising the regulation.

For a full picture of the AFCARS regulation, we invite commenters to review the AFCARS regulation and accompanying information that CB issued on our website, which can be found here: <https://www.acf.hhs.gov/cb/laws-policies/whats-new>.

II. Questions for Comment

1. Identify the data elements, non-ICWA-related, that are overly burdensome for state and tribal title IV-E agencies and explain why. Please be specific in identifying the data elements and provide a rationale for why collecting and reporting this information is overly burdensome. If possible, provide specific cost and burden estimates related to the following areas:

a. Recordkeeping hours spent annually:

i. Searching data sources, gathering information, and entering the information into the electronic case management system.

ii. Developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing procedures to comply with AFCARS requirements, and

iii. Training and administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals).

b. Reporting hours spent annually extracting the information for AFCARS reporting and transmitting the information to ACF.

2. Previously, we received comments regarding burden and the system changes needed to report the ICWA-related data elements of the 2016

SNPRM. We would like to receive more detailed comments on the specific limitations we should be aware of that states will encounter in reporting the ICWA-related data elements in the final rule. Please be specific in identifying the data elements and provide a rationale for why this information is overly burdensome. If possible, provide specific cost and burden estimates related to the following areas:

a. The number of children in foster care who are considered Indian children as defined in ICWA.

b. Recordkeeping hours spent annually:

i. Searching data sources, gathering information, and entering the information into the electronic case management system.

ii. Developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements, and

iii. Training and administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals).

c. Reporting hours spent annually extracting the information for AFCARS reporting and transmitting the information to ACF.

3. Previously, we received comments that particular data elements did not lend themselves to national statistics and were best assessed with qualitative methods such as case review. Please provide specific recommendations on which data elements in the regulation to retain that are important to understanding and assessing the foster care population at the national level. Also, provide a rationale for your suggestion that may include its relevance to monitor compliance with the title IV-B and IV-E programs or another strong justification for using the data at the national level.

4. Previously we received comments noting concerns with variability in some of the data elements across states and within jurisdictions. Please provide specific suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data. Also, provide a rationale for each suggestion and how the simplification would still yield pertinent data.

5. Previously we received comments questioning the utility, reliability, and purpose of certain data elements at the national level. Provide specific recommendations on which data elements in the regulation to remove because they would not yield reliable national information about children involved with the child welfare system

or are not needed for monitoring the title IV-B and IV-E programs. Please be specific in identifying the data elements and provide a rationale for why this information would not be reliable or is not necessary.

Dated: February 27, 2018.

Steven Wagner,
Acting Assistant Secretary for Children and Families.

Approved: March 8, 2018.

Alex M. Azar II,
Secretary.

[FR Doc. 2018-05042 Filed 3-13-18; 8:45 am]

BILLING CODE 4184-25-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970-AC47

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); Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Rulemaking; delay of compliance and effective dates.

SUMMARY: The Children's Bureau proposes to delay the compliance and effective dates in the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule for title IV-E agencies to comply with agency rules for an additional two fiscal years. We propose to delay the compliance and effective dates at the same time we seek public comment through an Advance Notice of Proposed Rulemaking (ANPRM), published elsewhere in this issue of the **Federal Register**, on suggestions to streamline the AFCARS data elements and remove any undue burden related to reporting AFCARS.

DATES: In order to be considered, we must receive written comments on this NPRM on or before April 16, 2018.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by one of the following methods:

• **Federal eRulemaking Portal:** <http://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.

• **Mail:** Written comments may be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please be aware that mail sent in response to this NPRM may take an additional 3 to 4 days to process due to security screening of mail.

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 <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Division of Policy, Children's Bureau at (202) 401-5789.

SUPPLEMENTARY INFORMATION: In the AFCARS final rule issued on December 14, 2016 (81 FR 90524), ACF provided an implementation timeframe of two fiscal years for title IV-E agencies to comply with 45 CFR 1355.41 through 1355.47 (81 FR 90529). On February 24, 2017, the President issued Executive Order 13777 on Enforcing the Regulatory Reform Agenda. In response to the President's direction that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, the HHS Task Force identified the AFCARS regulation as one where there may be areas for reducing reporting burden.

Therefore, we are engaging in two regulatory actions to adhere to our obligations under the EO. Through this NPRM, ACF proposes to revise § 1355.40 to provide an additional two fiscal years to comply with §§ 1355.41 through 1355.47. ACF also proposes to delay the effective dates of instructions 3 and 5 in the rule published December 14, 2016 (81 FR 90524), from October 1, 2019, to October 1, 2021. If this rule is finalized, the implementation timeframe would be delayed for title IV-E agencies to make revisions to their systems to comply with §§ 1355.41 through 1355.47. This NPRM is open for a 30-day comment period. Per Executive Order 12866, the typical comment period is 60 days. However, the reasons for the shorter comment period for this NPRM is that any delay in issuing a final rulemaking might lead to title IV-E agencies diverting resources to unnecessary changes to their systems to comply with the December 2016 AFCARS final rule. Furthermore, this rule does not establish additional regulatory obligations or impose any

additional burden on regulated entities. ACF believes that a 30-day comment period on this non-substantive rulemaking is a sufficient amount of time for the public to comment and ACF does not believe that a 30-day comment period will hamper public comment. ACF is publishing an ANPRM elsewhere in this issue of the **Federal Register** to seek suggestions on streamlining the data elements and potentially reducing burden to title IV-E agencies to report AFCARS data.

Section-by-Section Discussion

Section 1355.40 Foster Care and Adoption Data Collection

We propose to revise the compliance date in the regulation to provide an additional two fiscal years to comply with §§ 1355.41 through 1355.47. State and tribal title IV-E agencies must continue to report AFCARS data in the same manner they do currently, per § 1355.40 and appendices A through E of part 1355 until September 30, 2021. We propose that as of October 1, 2021, state and tribal title IV-E agencies must comply with §§ 1355.41 through 1355.47.

In assessing the AFCARS regulation in response to E.O. 13777, we identified the following issues:

- In the December 2016 final rule, there are 272 individual data points, of which 153 data points are new items added to AFCARS. Of the 153 data points, 65 are new items related to the Indian Child Welfare Act (ICWA).
- State commenters expressed concerns with data points that could not be easily reported to AFCARS because they are qualitative data points of which nuances about the circumstances of the child cannot be reported to AFCARS a quantitative data system, they are of a sensitive nature, or could not be aggregated easily at the national level for national statistics. These points included child, adoptive parent, guardian, and foster parent sexual orientation, health assessments, educational information, adoption and guardianship subsidy amounts, and information on legal guardians.
- The scope and complexity of data elements related to ICWA was also a concern. We note that most of the ICWA-related data elements in the December 2016 AFCARS final rule are not tied to statutory reporting requirements in title IV-E or IV-B. Rather, they were finalized to be consistent with the Department of Interior's (DOI) final rule on ICWA (published on June 14, 2016, 81 FR 38778) which is directed to state courts. Furthermore, the majority of the ICWA-

related data elements related to activities undertaken by the court are not routinely collected in child welfare electronic databases. The court findings and other activity taking place before the court represent a shift away from a child welfare agency reporting on its own activity to reporting on the activity of an independent third party. This raises questions of efficiency, reliability and consistency, which section 479(c)(1) and 479(c)(2) of the Social Security Act require for the AFCARS data collection.

- We also anticipate states having many questions about how to report the ICWA-related data elements. HHS has no expertise in ICWA compliance, statute, and regulations and is not the cognizant authority over it, yet the December 2016 final rule places HHS in the position of interpreting various ICWA requirements when providing technical assistance to state title IV-E agencies on how to report on those data elements. How states report the data ultimately impacts practice, potentially introducing inconsistency with DOJ and DOI's interpretation of ICWA.

- Costs for system changes, training to consistently collect and report ICWA-related data and time to gather/enter data (sometimes manually) into the case management system

The Supplemental Notice of Proposed Rulemaking that added the ICWA compliance data elements to the AFCARS was only open for comment for 30 days. This was an insufficient amount of time for states to fairly analyze unfamiliar data elements, accurately calculate burden associated with these elements, and move any comments through their chain of command for submission to HHS for consideration. The ANPRM, on the other hand, will be open for comment for 90 days. It asks title IV-E agencies and the public to comment on the data elements of the December 2016 final rule.

Therefore, in order to get additional feedback on these and other issues we are issuing a proposed rule to delay implementation of the December 2016 AFCARS final rule. As States must go to the expense to revise their data collection systems in response to the December 2016 final rule, we do not want states to incur these costs unnecessarily as we further assess burden under the rule. This is an opportunity for commenters to provide HHS with specific feedback on the data elements and how HHS can revise AFCARS to balance updating requirements, the need for better data, and the burden on title IV-E agencies. Through the aforementioned ANPRM

commenters will have the opportunity to tie ICWA related data elements to HHS functions/provisions thus adequately justifying their inclusion in the AFCARS collection.

Regulatory Impact Analysis

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF consulted with the Office of Management and Budget (OMB) and determined that this rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review. ACF determined that the costs to title IV-E agencies as a result of this rule will not be significant as defined in Executive Order 12866 (have an annual effect on the economy of \$100 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, or tribal governments or communities). Because the rule is not economically significant as defined in E.O. 12866, no cost-benefit analysis needs to be included in this NPRM. This proposed rule, if finalized as proposed, would be considered an E.O. 13771 deregulatory action.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this proposed rule 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 and tribal title IV-E agencies.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104-4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That

threshold level is currently approximately \$146 million. This proposed rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$146 million or more.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106-58) requires federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This proposed rule will not have an impact on family well-being as defined in the law.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 35, as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. PRA rules require that ACF estimate the total burden created by this proposed rule regardless of what information is available. ACF provides burden and cost estimates using the best available information. Information collection for AFCARS is currently authorized under OMB number 0970-0422. This notice of proposed rulemaking does not make changes to the AFCARS requirements for title IV-E agencies; it delays the effective date and provides title IV-E agencies with additional time to comply with sections 1355.41 through 1355.47. Thus, the annual burden hours for recordkeeping and reporting does not change from those currently authorized under OMB number 0970-0422. Therefore, we are not seeking comments on any information collection requirements through this NPRM.

List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Computer technology, Grant programs—social programs, Reporting and recordkeeping requirements.

(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 27, 2018.

Steven Wagner,

Acting Assistant Secretary for Children and Families.

Approved: March 8, 2018.

Alex M. Azar II,

Secretary.

For the reasons set forth in the preamble, we propose 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 § 1355.40 by revising paragraph (a) to read as follows:

§ 1355.40 Foster care and adoption data collection.

(a) *Scope.* State and tribal title IV-E agencies must follow the requirements of this section and appendices A through E of this part until September 30, 2021. As of October 1, 2021, state and tribal title IV-E agencies must comply with §§ 1355.41 through 1355.47.

* * * * *

[FR Doc. 2018-05038 Filed 3-13-18; 8:45 am]

BILLING CODE 4184-25-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 17-287, 11-42, and 09-197; Report No. 3087]

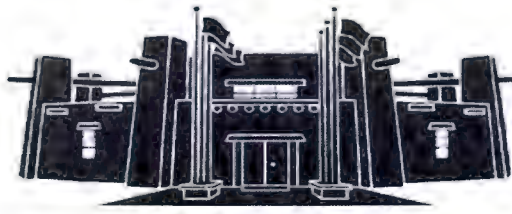
Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration; correction.

SUMMARY: The Federal Communications Commission (Commission) published a document in the **Federal Register** of March 2, 2018 (83 FR 8962), regarding Petitions for Reconsideration filed in the Commission's rulemaking proceeding. The document contained the incorrect deadline for filing replies to an opposition to the Petitions. This document corrects the deadline for replies to an opposition to the Petitions. **DATES:** Oppositions to the Petitions must be filed on or before March 19, 2018. Replies to an opposition must be filed on or before March 29, 2018.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.



MEMORANDUM

TO: Honorable Jonathan Hale
Navajo Nation Council

FROM:


Edward A. McCool, Principal Attorney
Office of Legislative Counsel

DATE: June 8, 2018

SUBJECT AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'YIYATI' COMMITTEES; SUPPORTING AS THE NAVAJO NATION POSITION, OPPOSING THE STREAMLINING OR ELIMINATION OF THE 2016 ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM-INDIAN CHILD WELFARE ACT (AFCARS-ICWA) DATA ELEMENTS, THE PROPOSED TWO YEAR DELAY OF IMPLEMENTATION AND OBJECTING TO THE LACK OF SUFFICIENT TRIBAL CONSULTATION BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0196-18_____

SPONSOR: Jonathan Hale

TITLE: An Action Relating to Health, Education and Human Services and Naabik'iyati' Committees; Supporting as the Navajo Nation Position, Opposing the Streamlining or Elimination of the 2016 Adoption and Foster Care Analysis and Reporting System-Indian Child Welfare Act (AFCARS-ICWA) Data Elements, the proposed two year delay of implementation and objecting to the lack of sufficient Tribal consultation by the U.S. Department of Health and Human Services, Administration for Children and Families

Date posted: June 8, 2018 at 6:10pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0196-18

SPONSOR: Honorable Jonathan L. Hale

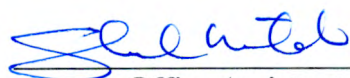
TITLE: An Action Relating to Health, Education and Human Services and Naabik'iyati' Committees; Supporting as the Navajo Nation Position, Opposing the Streamlining or Elimination of the 2016 Adoption and Foster Care Analysis and Reporting System-Indian Child Welfare Act (AFCARS-ICWA) Data Elements, the proposed two year delay of implementation and objecting to the lack of sufficient Tribal consultation by the U.S. Department of Health and Human Services, Administration for Children and Families

Posted: June 8, 2018 at 6:10pm

5 DAY Comment Period Ended: June 13, 2018

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inconclusive Comments	<i>None</i>



**Office Assistant
Office of Legislative Services**

6.14.18 @ 9:44am

Date/Time

Committee Report

THE HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE OF THE NAVAJO NATION COUNCIL to whom has been assigned;

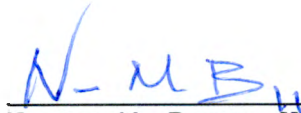
LEGISLATION NO. 0196-18

AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'IYATI' COMMITTEES; SUPPORTING AS THE NAVAJO NATION POSITION, OPPOSING THE STREAMLINING OR ELIMINATION OF THE 2016 ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM-INDIAN CHILD WELFARE ACT (AFCARS-ICWA) DATA ELEMENTS, THE PROPOSED TWO YEAR DELAY OF IMPLEMENTATION AND OBJECTING TO THE LACK OF SUFFICIENT TRIBAL CONSULTATION BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES

Sponsor: *Honorable Jonathan L. Hale*

Has had under consideration and report the same with the recommendation that Legislation 0196-18 PASS with no amendment and no directive; and therefore referred the same to the NAABIK'IYATI' COMMITTEE OF THE NAVAJO NATION COUNCIL

Respectfully Submitted,



Norman M. Begay, Vice-Chairperson
Health, Education and Human Services Committee

June 18, 2018 - Main Motion

Motion by: Honorable Nelson BeGaye

Seconded by: Honorable Jonathan L. Hale

Vote: 4 in favor; 0 Opposed; Vice-Chairperson Not Voting

Absent (excused): Steven Begay

Yeas: Nelson BeGaye; Jonathan L. Hale; Amber Kanazbah Crotty; Nathaniel Brown

Nays: None