

subject to review and the criteria for determining substantial conformity, we have focused on the emphasis the statute places on program improvements. We have integrated the proposed review requirements with other requirements related to data collection and the CFSPs in order to reduce the burdens on States whenever possible. Finally, in emphasizing the importance of outcomes over procedure, we are proposing a review process that States can adapt to their ongoing self-evaluation and integrate into their own quality assurance efforts, apart from periodic Federal reviews.

We chose not to emphasize the penalty structure associated with the reviews. Rather, we have designed a review process that will lead to meaningful improvements in the outcomes of services delivered to children and families and will strengthen State and Federal collaboration. We have purposefully crafted the regulation to encourage States to make the necessary program improvements.

B. Summary of the child and family service reviews

We are proposing to review State programs in two areas: (1) outcomes for children and families in the areas of safety, permanency, and child and family well-being; and (2)

achieve an objectively selected sample. We have not prescribed a specific number of cases to be included in the sample, since the number will vary by State, depending upon the size of the State and the areas under review. However, we propose to select a relatively small sample, that is, 30 - 50 cases, and conduct an intense review, including interviews with the relevant parties in each case.

15 [In some pilot States, we used both the old review method of merely reading case records and the proposed method of reading case records and conducting interviews with families and other relevant parties. In those pilot States where both the old and the proposed review methods were deployed simultaneously, the review teams reported that the proposed method provided a more accurate measure of the status of outcomes in the States. Conducting interviews with families and other relevant parties resulted in a more balanced approach by the review team when considering the State's success in achieving outcomes for families.

In paragraph (d), we propose that partial reviews be jointly planned and conducted by the State and ACF. Partial reviews will be targeted to the nature of the concern.

We believe the stated emphasis on program improvement will best be served through timely feedback to the States on the

conclusions about outcomes be made on the basis of several perspectives, including those of the children, parents, social worker and service providers involved in the cases reviewed, in order to provide us with more comprehensive information about each case undergoing review.

#18 [We believe that the proposed review of outcomes is necessary to achieve the goal of improved services. In each of the pilots, reviewers were able to apply the criteria to the outcomes in a manner that led to decisions considered by the review team to be valid. Further, the compilation of findings around outcomes by the review team was generally consistent with the State agency's perception of the strengths and needs of its programs which, we believe, adds further validity to the approach we are proposing.

In paragraph (c), we propose also to link substantial conformity to a State's implementation of those CFSP requirements clearly related to delivering child welfare services which lead to improved outcomes. This basis for establishing substantial conformity is in addition to the review of outcomes. We have identified the seven core systemic factors that we propose to examine, along with the specific criteria that will be reviewed to determine if each systemic factor is operating in substantial conformity. The factors we have chosen to examine emerged from a much longer

thus, proposing a three-year period of time as the maximum implementation period for the plans.

In paragraph (e), we propose procedures for evaluating the implementation of program improvement plans. We propose that the State members of the review team and the ACF Regional Office determine the appropriate intervals for evaluating the plans, since the contents of each plan and the needs of individual States will vary significantly. Our proposal that the evaluations occur no less frequently than annually is an effort to: 1) assure that delays in evaluation do not prevent the State from correcting the areas of nonconformity in a timely manner; 2) integrate the implementation of the plans with the joint planning process between the State and ACF; and 3) reduce the burden on States by using the existing annual CFSP progress review and update as the vehicle for evaluating the plans, rather than creating an additional process.

In paragraph (e)(3), we address evaluation of individual components of the program improvement plans. We are proposing that the areas of nonconformity be addressed individually when evaluating the plans, so that once they are determined to be complete they will not require further evaluation.

Response to OMB
Comment # 22

1) (5) we clarify that if an administrative approved by a court, holds a permanency safeguards extended to parents in court be extended to the parents by the

ents for filing a petition to terminate parental rights per section 475(5)(E) of the Social Security Act.

In this section, we describe the new requirements at section 475(5)(E) of the Act for termination of parental rights (TPR). Congress passed this provision to compel States to quickly move those children for whom adoption is the appropriate plan to permanency. It is not intended to create a pool of legal orphans. Misinterpretation of the reasonable efforts requirements and other factors have resulted in children remaining in foster care for extended periods of time while the State agency works to make the child's home safe for his or her return. Congress passed this provision to end children's languishing in foster care.

22
deleted
section

In paragraph (i)(1), we follow the statute in describing under what conditions the State, through its authorized attorney, must file or join a petition for TPR in accordance with section 475(5)(E) of the Act.

specifically to outcomes and the delivery of improved services. We are, in effect, proposing that conformity with these requirements constitutes "substantial conformity," rather than reviewing for and requiring some percentage of compliance with all of the title IV-B and IV-E State plan requirements. Also, making determinations of substantial conformity based on specific outcomes and systemic factors will permit States to take advantage of technical assistance opportunities to focus on those aspects of their programs needing improvement.

#31 [In paragraphs (a)(1) and (2), we propose to determine the State's substantial conformity with applicable CFSP requirements based on: (1) the achievement of the seven outcomes specified in paragraph (b); and (2) the functioning of seven core systemic factors directly related to the State's capacity to deliver services leading to improved outcomes, as specified in paragraph (c). In paragraph (a)(3), we propose that a review and analysis of the aggregate data in the State self-assessment should be consistent with, and support, the findings of the on-site review. Significant discrepancies between the aggregate data and the on-site review findings may be a contributing factor in determining that a State is not in substantial conformity.

Stephen A. Glasser

Title IV-E Eligibility review
Children of Family ~~Service~~ Review
outcome review



* Mary Bondelt - preamble.

Foster care Eligibility Review
based on
H&E SSA

not
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CFSR

all state plan require
statutory or re
outcome

427 review
care plan
admission review



June 8th

10³⁰ - Tues. 8th

hearing

Once OMB clears the rule -
you can talk about policy.

REGULATORY REVIEW WORKSHEET

OMB NUMBER: 0970-A223 RECEIVED : 07/10/1998
 RIN NUMBER: 0970-AA97 E.O. DUE DATE: 10/08/1998
 CHRONOLOGY: No previous reference EXTENDED : (Y/N)
 APPEALED : ___/___/___

AGENCY : Department of Health and Human Services
 SUBAGENCY : Administration for Children and Families

TITLE: Title IV-E Foster Care Eligibility Reviews and Child and Family
 Services State Plan Reviews, MEPA and ASFA Implementation

STAGE: Proposed Rule ECONOMICALLY SIGNIFICANT: No
 LEGAL DEADLINE: No UNFUNDED MANDATE : No

DESK OFFICER: Laura Oliven
 ANALYST : Randy Lutter

ACTION:
 ___ (1) Consistent Without Change ECONOMICALLY SIGNIFICANT: ___Yes ___No
 ___ (2) Consistent With Change
 ___ (3) Withdrawn by Agency MAJOR : ___Yes ___No
 ___ (7) Returned - Sent Improperly
 ___ (9) Returned for Reconsideration UNFUNDED MANDATE : ___Yes ___No
 ___ (11) Emergency (If yes, check all that apply)
 ___ (12) Statutory or Judicial Deadline ___ State, local, tribal governments
 ___ Private Sector

REGULATORY IMPACT:
 ___ (D) Deregulatory
 ___ (R) Regulatory
 ___ (N) Nonregulatory

SIGNATURES AND DATES:

RMO	Desk Officer	Economist	OIRA
_____	_____	_____	_____
Date: _____	Date: _____	Date: _____	Date: _____

AGENCY NOTIFIED: ___/___/___

TITLE:

Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, MEPA Implementation, and ASFA Implementation

RIN: 0970-AA97 (NO STAGE)

REGULATORY PLAN: No

PRIORITY: Other Significant

REINVENTING GOVERNMENT:

This rulemaking is not part of the Reinventing Government effort.

LEGAL AUTHORITY:

42 USC 627; 42 USC 671; 42 USC 1302; 42 USC 1320a-1a

CFR CITATION:

45 CFR 1355; 45 CFR 1356

LEGAL DEADLINE:

Final, Statutory, July 1, 1995.

ABSTRACT:

This NPRM will propose requirements that implement the statutory provisions of the Social Security Act Amendments of 1994 on review of State programs under parts B and E of the Social Security Act for conformity with State Plan requirements including the Adoption and Safe Families Act requirements related to State plan issue. It will propose requirements that govern on-site eligibility reviews that the Administration for Children and Families conducts to assure State agencies' compliance with the statutory requirements under title IV-E of the Social Security Act for the eligibility of foster care providers and the eligibility of children in foster care. The NPRM will provide for enforcement of the prohibition on race-based discrimination in the foster care and adoptive placements.

TIMETABLE:

ACTION	DATE	FR CITE
NPRM.....	07/00/98	
REGULATORY FLEXIBILITY ANALYSIS REQUIRED: No		
GOVERNMENT LEVELS AFFECTED: State		

RIN: 0970-AA97

DATE 7/10/98

TITLE:

PAGE 2

Title IV-E Foster Care Eligibility Reviews and Child and Family
Services State Plan Reviews, MEPA Implementation, and ASFA
Implementation

ADDITIONAL INFORMATION:

This action was previously reported under RIN 0970-AB60.

AGENCY CONTACT:

Kathleen McHugh,
CB/ACYF,
Department of Health and Human Services,
Administration for Children and Families,
Washington, DC 20013,
202 401-5789

EXECUTIVE ORDER 12866 SUBMISSION

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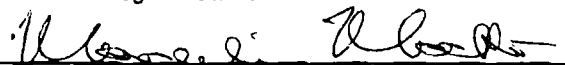
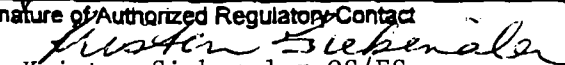
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1. Agency/Subagency originating request HHS/ACF/ACYF	2. Regulation Identifier Number (RIN) 0970-AA97 0970-A223
3. Title Title IV-E Foster Care Eligibility Reviews and Child and Family Services STATE PLAN REVIEWS, MEPA and ASFA Implementation.	
4. Stage of Development ☐ Prerule ☒ Proposed Rule ☐ Interim Final Rule ☐ Final Rule ☐ Final Rule - No material change ☐ Notice ☐ Other Description of Other _____	5. Legal Deadline for this submission a) ☒ Yes ☐ No b) Date <u>7</u> / <u>1</u> / <u>95</u> DD MM YYY c) ☒ Statutory ☐ Judicial
7. Agency Contact (person who can best answer questions regarding the content of this submission) Kathleen McHugh Phone (202) 401-5789	6. Designations a) Economically Significant (E.O. 12866) ☐ Yes ☒ No b) Unfunded Mandate (2 U.S.C. 1532) ☐ Yes ☒ No If either of the above is "Yes," submit four (4) complete packages to OIRA

Certification for Executive Order 12866 Submissions

The authorized regulatory contact and the program official certify that the agency has complied with the requirements of E. O. 12866 and any applicable policy directives.

Signature of Program Official 	Date 5/1/98
Signature of Authorized Regulatory Contact  Kristen Siebenaler OS/ES	Date 7-9-98

Preamble

4184-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR PARTS 1355 and 1356

RIN: 0970-AA97

Title IV-E Foster Care Eligibility Reviews and
Child and Family Services State Plan Reviews

AGENCY: Administration on Children, Youth and Families (ACYF),
Administration for Children and Families (ACF),
Department of Health and Human Services (DHHS)

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Administration for Children and Families is proposing to amend the current regulations for Child and Family Services by adding new requirements governing the review of a State's conformity with its State plan under titles IV-B and IV-E of the Social Security Act (the Act). This Notice of Proposed Rulemaking (NPRM) implements the provisions of the Social Security Act Amendments of 1994 (Public Law 103-432), the Multiethnic Placement Act (MEPA) as amended

by Public Law 104-188, and certain provisions of the Adoption and Safe Families Act (ASFA) of 1997 (Public Law 105-89).

In addition, this NPRM proposes to set forth regulations that clarify certain eligibility criteria that govern the title IV-E foster care eligibility reviews which the Administration on Children, Youth and Families conducts to ensure a State agency's compliance with statutory requirements under the Act.

The publication of a Notice of Proposed Rulemaking often engenders confusion in the field regarding its applicability to existing policy. The existing regulations and policy remain in full force and effect. Regulations published in the final rule will be effective prospectively from the date of publication and have no bearing on the application of policy that was in effect prior to the publication of the final rule.

DATES: In order to be considered, written comments on this proposed rule must be received on or before [insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Please address comments to Carol W. Williams,
Associate Commissioner, Children's Bureau,
Administration on Children, Youth and Families,
330 C Street, S.W., Washington, D.C. 20447.
Comments will not be accepted through e-mail or by
telephone.

Beginning 14 days after the close of the comment
period, comments will be available for public
inspection in Room 2068, 330 C Street, S.W.,
Washington, D.C., Monday through Friday, between the
hours of 9:00 a.m. and 4:00 p.m.

In order to ensure that public comments have maximum
effect in developing the final rule, please cite the
section and paragraph number of the proposed regulation
that relates to each comment. Comments that concern
information collection requirements must be sent to the
Office of Management and Budget at the address listed
in the Paperwork Reduction Act section of this
preamble. A copy of these comments also may be sent to
the Department representative cited above.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Director of
Policy, Children's Bureau, Administration on
Children, Youth and Families, (202) 401-5789.

SUPPLEMENTARY INFORMATION: The preamble to this Notice of Proposed Rulemaking (NPRM) is organized as follows:

- I. Summary of Proposed Review Processes
- II. Introduction to the title IV-E eligibility and child and family service reviews
 - A. Key features of the new reviews
 - B. Consultation with the field and pilot reviews
 - C. Reinventing the review process
- III. Background
 - A. Legislative history
 - B. Interrelationship of titles IV-B and IV-E
- IV. Overview of title IV-E eligibility reviews
 - A. Development of the reviews
 - B. Summary of the title IV-E eligibility review process
- V. Overview of child and family service reviews
 - A. Development of the reviews
 - B. Summary of the child and family service reviews

- VI. Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 and the Multiethnic Placement Act of 1994
- VII. Welfare reform legislation and title IV-E eligibility
- VIII. The Adoption and Safe Families Act of 1997
- IX. Strategy for Regulating the Adoption and Safe Families Act of 1997
- X. Section-by-section discussion of the NPRM
- XI. Impact analysis

I. Summary of Proposed Review Processes

This Notice of Proposed Rulemaking (NPRM) presents a revised framework for reviews of Federally-assisted child and family services and for reviews of related eligibility determinations for Federally-assisted foster care programs. The revised review procedures for these programs were developed in response to concerns expressed by the Congress and the States regarding the effectiveness of the current review procedures and the benefits to the States relative to

the efforts required of them. ACF had begun revising the review procedures when Congress, through the Social Security Amendments of 1994 (Public Law 103-432), mandated changes in the Federal monitoring of State child and family service programs funded under titles IV-B and IV-E. This legislation directed the Department of Health and Human Services, in consultation with State agencies, to promulgate regulations for child and family service programs which will:

- determine whether these programs are in substantial conformity with applicable State plan requirements and Federal regulations;
- develop a timetable for conformity reviews; and
- specify the State plan requirements subject to review, and the criteria to be used in determining a State's substantial conformity with these requirements.

Since ACF was already revising its approach to monitoring eligibility requirements for title IV-E foster care maintenance payments at the time the legislation was enacted, we have also included the proposed title IV-E eligibility review process in this NPRM. While Public Law 103-432 also permits a program improvement process for

compliance issues associated with the Adoption and Foster Care Analysis and Reporting System (AFCARS), we intend to propose an AFCARS program improvement protocol in a separate NPRM.

The revised review processes, including the instruments used in the reviews, grew out of extensive consultation with interested groups, individuals and experts in the field of child welfare and related areas. A series of focus groups related to the child and family service reviews was conducted with representatives of State programs and national organizations, as well as with family and child advocates. Review teams consisting primarily of Federal and State agency staff have conducted 20 pilot reviews of child and family services and foster care programs using the proposed processes. We have taken seriously the comments and suggestions received during the consultations, focus groups and pilot reviews and have incorporated them in the development and refining of the new monitoring approaches that are proposed in this NPRM.

The revised review framework reflects the basic purposes of publicly-supported child and family services: to assure safety for all children; to assure permanent, nurturing homes for these children; and to enhance the well-being of children and their families. In support of these goals,

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this proposal is designed to achieve the following objectives:

- *before* Reviews of child and family services programs will focus on the results these programs achieve. In the past, review procedures have focused almost entirely on review of the accuracy and completeness of case files and other records to determine that required legal processes and protections were being carried out. This proposal provides for reviews that determine that child welfare practices, procedures and requirements are achieving desired outcomes for children and families. Reviews to assure eligibility for Federally-assisted foster care will not only address conformity with key requirements, but will assist States in improving their systems, thereby enhancing their capacity to serve children needing foster care placements.
- The revised framework for conducting reviews of both child and family services and eligibility for Federal foster care payments will promote partnerships between States and the Federal government. It will strengthen Federal-State collaboration in achieving improvements in child welfare systems. Joint reviews, with peer involvement, will identify strengths and weaknesses, define corrective actions, and make it possible to

craft specific technical assistance plans that support program improvements.

- This proposed revision will promote greater public support and collaboration for child and family services within each State. The proposal for participation of interested and committed individuals and organizations in the State self-assessment process, in the conduct of on-site reviews, and in the development and evaluation of program improvement plans will accommodate broader perspectives on the degree to which the desired results are being achieved and encourage greater commitment within the State to address areas where improvements are needed.
- The revised approach will shift the focus of reviews to program improvement and away from financial penalties imposed on those States that do not "pass" their reviews. States that do not achieve expected results in areas related to child safety, permanency and well-being may have a portion of their Federal funds withheld, but only if the State's program improvement plan does not effectively correct the identified problem(s).

- The proposed new framework for reviews will be comprehensive. It will address not only foster care and adoption but the full range of child and family services, including family preservation and support services, child protective services, and independent living services.
- The revised review procedures will generate a significant amount of useful information on the State's child welfare system, enabling policy makers, program managers, Federal program officials, and concerned citizens to understand better the full range of issues related to the State's child and family services. The dynamic process -- involving interviews with children, parents, judges, social workers, foster parents, and other major service providers -- will yield findings of higher quality which will lead to improved outcomes in a way that the previous reviews of case files could not.

II. Introduction to the title IV-E eligibility and child and family service reviews

A. Key features of the new reviews

Both of the proposed review processes reflect significant departures from the existing reviews. We have intentionally proposed measures that will reduce the burden on States while balancing the need to review for protections that are critical to the safety and well-being of a vulnerable population of children and families. Wherever the statute has permitted flexibility, we have attempted to reduce our reliance on the paperwork and documentation requirements that characterized prior reviews in favor of a more comprehensive examination of the results of a State's efforts to alleviate the problems of families and children. While the two procedures have unique features and concerns, some key features are common to both:

- The procedures have moved from a focus on total compliance with statutory requirements to a determination of "substantial conformity" or "substantial compliance" in an effort to avoid penalizing States whose systems are generally performing well;
- Both proposed processes now include a stage where program improvement measures will be undertaken to correct areas of nonconformity and noncompliance and strengthen State programs;

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- Both reviews provide opportunities for States to receive technical assistance from the Federal government in implementing program improvement plans;
- The reviews operationalize partnership concepts through joint Federal/State participation in the on-site reviews and in developing and evaluating program improvement plans;
- The reviews rely on existing sources of data, such as the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS), for information needed in the reviews, rather than requiring States to duplicate efforts in data collection and submissions;
- Both reviews propose to focus attention on recent practices in an effort to evaluate fairly the current status of child and family services in the States;
- The proposed regulations include various provisions for flexibility and individualizing the reviews to States.

B. Consultation with the field and pilot reviews

ACF has sought extensive consultation from the child welfare field in a variety of ways. Experts in the field and representatives of legal, advocacy, educational and research institutions provided information to the teams on issues related to both reviews. A series of focus groups related to the child and family service reviews was conducted with representatives of State programs, national organizations, family and child advocates, National Resource Centers, child welfare experts and others. Drafts of instruments and procedures were reviewed by similar individuals and organizations throughout the developmental process. On-site review teams, composed primarily of Federal and State agency staff, conducted 10 full child and family service pilot reviews and two partial pilots in fiscal years 1995 through 1997 using the proposed process. Pilots of the title IV-E eligibility reviews were conducted in 10 States during fiscal years 1995 through 1997.

C. Reinventing the review process

In 1994, the Administration for Children and Families commissioned a team to develop recommendations for reinventing the review process across the range of child and family services programs. Later, two separate teams were established in the Administration on Children, Youth and

Families' Children's Bureau to identify ways that the Federal process of reviewing State programs could be redesigned or restructured.

In commissioning two teams to reinvent the review process, the ACF leadership recognized that both the section 427 reviews and the title IV-E eligibility reviews had led to a number of improvements in child and family services, including written case plans as a routine component of child welfare casework, periodic judicial and administrative reviews of children in foster care, increased capacity among States to identify and track children in foster care, and an increased focus on permanency planning for children in foster care. Other contributions included the establishment of procedural protections for vulnerable children against remaining in unsafe homes or in non-permanent placements, increased involvement of the courts in making judicial determinations about removals of children from their homes and the need to continue foster care placements, and enhanced stewardship by ensuring that Federal funds were expended in accordance with statutory requirements.

Along with these accomplishments, the ACF also recognized the validity of a number of criticisms about the reviews. Because the reviews relied heavily on case documentation and process, States that provided and documented all the

required protections were able to pass compliance reviews without necessarily having practices and procedures in place culminating in satisfactory outcomes for the children and families served by the State. On the other hand, States that might be achieving desirable outcomes, but whose case record documentation did not reflect all of the required protections, were penalized through the loss of incentive funds.

Additionally, the reviews focused only on foster care services and adoption assistance rather than on the full range of child and family services; therefore, they did not promote the development and integration of a continuum of services needed by many of the families and children served by State agencies. The absence of regulations governing both review processes also complicated the goal of consistent application of policies and review procedures across the States.

In June 1994, the Office of Inspector General, Department of Health and Human Services, reported the findings of a study of oversight of State child welfare programs that confirmed our concerns. The report was based on information obtained from interviews with State child welfare officials in 13 States, and other sources. It addressed a number of issues about previous section 427 and title IV-E eligibility

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reviews, including the following: review reports had not
been issued in a timely fashion; ACF had not provided
sufficient technical assistance to States; severe problems
that were identified in successful lawsuits against States
had not surfaced during a review, and reviews focused more
on case record content than how well children were served.
The report delivered a clear message from State officials
that the existing review processes were not adequately
meeting their needs and should be revised substantially.

At the same time that ACF was taking steps to reinvent its
review processes, Public Law 103-432, the Social Security
Act Amendments of 1994, was signed by the President on
October 31, 1994. The Conference Committee report for the
Social Security Act Amendments of 1994 outlined
Congressional concerns with ACF review practices. It
pointed out that the review process did little to address
quality of care for children; that compliance criteria
needed to be written clearly and uniformly; and that review
standards needed to be developed in a more open setting
which encouraged discussion and participation among affected
parties. The concerns of State officials, ACF and Congress
presented a clear case for reinventing the review process
and form the basis for the strategies proposed in this NPRM.

III. Background

A. *Legislative history*

The review structures for section 427 and title IV-E have been in place since the early 1980s. They were authorized by the Adoption Assistance and Child Welfare Act (Pub. L. 96-272), passed by Congress in 1980, which amended sections of title IV-B and provided for mandatory Federal reviews of State foster care services under section 427 of the Act. The statute also established Part E of title IV of the Social Security Act, "Federal Payments for Foster Care and Adoption Assistance." The foster care component of the Aid to Families with Dependent Children (AFDC) program, which had been an integral part of the AFDC program under title IV-A of the Act, was transferred to the new title IV-E, effective October 1, 1982.

The creation of title IV-E and amendments to title IV-B reflected the perception of Congress and most State child welfare administrators that the public child welfare agencies responsible for dependent and neglected children had become holding systems for children living away from their parents. Congress intended that Public Law 96-272 would mitigate the need for the placement of children into foster care and encourage greater efforts by State agencies to find permanent homes for children--either by making it possible for them to return to their own families or by

placing them in adoptive homes. The goals of Public Law 96-272 have not yet been fully realized, however, as evidenced by continued increases in the numbers of children entering foster care, increasing lengths of stay in care, and growing concerns about the safety, permanency and well-being of children served by public agencies.

In August 1993, under the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), Congress again amended title IV-B, creating two subparts and extending the range of child and family services funded under title IV-B to include specific family preservation and family support services designed to strengthen and support families and children in their own homes, as well as children in out-of-home care. Later, through the Social Security Amendments of 1994, Congress repealed section 427 of the Act and amended section 422 of the Act to include, as State plan assurances, the protections formerly required in section 427. As a result, ACF is no longer conducting "427" reviews to confirm whether (or not) a State is eligible to receive additional title IV-B, subpart 1 funds. In addition to mandating the Secretary, DHHS, to promulgate regulations for reviews of State child and family service programs, the amendments to the Act also required the Department to make technical assistance available to the States, and afforded States the opportunity to develop and implement corrective action plans designed to

ameliorate areas of nonconformity before Federal funds are withheld due to the nonconformity.

In 1994, Congress passed the Multiethnic Placement Act (MEPA) to address excessive lengths of stay in foster care experienced by children of minority heritage. One factor contributing to these excessive lengths of stay in foster care was State agencies' attempts to place children of minority heritage in foster and adoptive homes of similar racial or ethnic background. The MEPA forbids the delay or denial of a foster or adoptive placement solely on the basis of the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. At the same time, Congress added a title IV-B State plan requirement, section 422(b)(9), which compels States to make diligent efforts to recruit and retain prospective foster and adoptive parents who reflect the racial and ethnic diversity of the children in the State for whom foster and adoptive homes are needed. The MEPA, in section 553, permitted States to consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parent to meet the needs of a child of such background as one of a number of factors in making foster and adoptive placements. In 1996, through section 1808, "Removal of Barriers to Interethnic Adoptions" (Section 1808), of the Small Business Job Protection

Act (Public Law 104-188), Congress repealed section 553 of MEPA, believing that the "permissible consideration" language therein was being used to obfuscate the intent of MEPA. Section 1808 amended title IV-E by adding a State plan requirement, section 471(a)(18), which prohibits the delay or denial of a foster or adoptive placement based on the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. Section 1808 also dictates a penalty structure and corrective action planning for any State that violates section 471(a)(18) of the Act.

On November 19, 1997, President Clinton signed the first child welfare reform legislation since Public Law 96-272 in 1980. The Adoption and Safe Families Act (ASFA) seeks to provide States the necessary tools and incentives to achieve the original goals of Public Law 96-272: safety; permanency; and child and family well-being. The impetus for the ASFA was a general dissatisfaction with the performance of the child welfare system in achieving these goals for children and families. This dissatisfaction came as a result of:

- 1) high profile child deaths across the country, the occurrence of which was often attributable to confusion and misinterpretation over the reasonable efforts provision. This confusion

stems from the notion that there is a lack of clarity about the relationship between reasonable efforts and child safety;

- 2) growth in the foster care caseload. We are now slightly in excess of a half-million children in foster care on any one day. This number has almost doubled since the mid-eighties. More children are coming into foster care each year than are exiting;
- 3) increased costs of foster care; and,
- 4) a need for greater emphasis on individual responsibility by parents and accountability by States for moving children to permanency in a timely manner.

The ASFA seeks to strengthen the child welfare system's response to children's need for safety and permanency at every point along its continuum of care. In this NPRM, we propose regulations for those provisions in the ASFA which strengthen the child welfare system's response to safety and certain provisions which address permanency.

B. Interrelationship of titles IV-B and IV-E

Titles IV-B and IV-E are closely related parts of the Act. Each title provides funds to States to serve large numbers of children and families who are among the most vulnerable to harm and separation in our society. The two programs help finance services to the almost 3,000,000 children who are reported annually as alleged victims of maltreatment (data from 1994 NCANDS), and the approximately 469,000 children who are in foster care placements on a given day (estimates from 1994 Voluntary Cooperative Information System (VCIS)/AFCARS).

Title IV-B, subpart 1 makes funds available to States for services directed toward strengthening families and preventing unnecessary separation of parents and children, providing care and services to children and families when separation occurs, and working with parents and children to reunify families or achieve an alternate permanent plan for the child. Subpart 2 initially provided funding for family preservation and family support services. Under the ASFA, Subpart 2 funds must now also be used to provide time-
 limited reunification services and services to promote and support adoption.

Title IV-E foster care funds enable States to provide foster care for children who were or would have been eligible for assistance (Aid to Families with Dependent Children) under a

State's approved title IV-A plan (as in effect on July 16, 1996) but for their removal from home. The Act includes requirements which define the circumstances under which a State shall make foster care maintenance payments (section 472(a)), and mandates a child's placement in an approved or licensed facility (section 472(b)). The eligibility review is focused on these requirements, so that ACF can verify that children in foster care for whom Federal financial participation is being claimed (or can be claimed) are eligible and are being placed with eligible foster care providers.

Titles IV-E and IV-B are linked not only by common goals but by numerous cross-references to detailed protections or safeguards for children in foster care, e.g., a case review system which includes periodic case reviews and permanency hearings. Further, while title IV-E requires that reasonable efforts be made to prevent removal of children from their homes when it is safe to do so, to safely reunify children in foster care with their families, and to make and finalize permanent placements for children who cannot return home, the services needed to provide reasonable efforts are not funded by title IV-E, but are made available in many circumstances through title IV-B and other sources of State and Federal funds. While title IV-B requires States to deliver child welfare services in order to be eligible for

Federal funds, title IV-E tests both the eligibility of each child on whose behalf a payment is made and the eligibility of the foster home or child-care institution in which the child is placed.

IV. Overview of title IV-E eligibility reviews

A. *Development of the reviews*

The title IV-E eligibility review process proposed in this NPRM reflects a number of important lessons learned in the pilot reviews, including the following:

- Pilot reviews conducted jointly by a team of Federal and State staff fostered working partnerships and assisted the States in identifying strategies for corrective action where indicated in the reviews and increased the knowledge of State staff on eligibility requirements for title IV-E foster care maintenance payments.
- Examining a sub-sample of non-IV-E cases during the reviews, along with the IV-E cases, increased the potential for States to receive Federal funding to which they are entitled by statute and demonstrated the fairness of the reviews to States.

- The emphasis on program improvement planning in the reviews led to specific recommendations for improving title IV-E error rates and the quality of services to children in such critical areas as foster home licensing and services to prevent removal of children from their families and reunify children in foster care with their families.
- Examination of cases involving more recent foster care entries linked the reviews and potential disallowances to current practices and policies that impact both eligibility for services and the quality of services provided, rather than focusing on older practices inherent to the previous reviews.

The revised title IV-E review strategy incorporates these important lessons learned from the pilots, while ensuring compliance with key requirements of the statute regarding eligibility for funds. The requirements are designed to enhance child safety, permanency and well-being, and they provide a specific framework for reviewing State compliance through the title IV-E eligibility reviews.

We believe that the proposed changes to the review process will produce results which are more meaningful and helpful to States which undergo a title IV-E eligibility review with

the intention of improving their State systems. Additional changes in the title IV-E eligibility review process are included in the section-by-section discussion of the NPRM.

B. *Summary of the title IV-E eligibility review process*

We are proposing to conduct title IV-E eligibility reviews in States at three-year intervals. The review process includes an initial review of foster care cases for the title IV-E eligibility requirements defined in the statute. States determined to be in substantial compliance based on the review will not be subject to another review for three years. States that are determined not to be in compliance will develop and implement a program improvement plan designed to correct the areas of non-compliance, and a follow-up review will be conducted after completion of the program improvement plan.

The reviews will be conducted by a joint team of Federal and State staff in order to promote working partnerships through the review process. In contrast to prior reviews, the sample for the reviews will be drawn from the AFCARS data base, reducing the burden on the State to select the sample.

The threshold error rate for a determination of non-compliance is proposed at 15 percent in the first round of

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reviews following publication of the final rule, and 10 percent for subsequent years. States with error rates within the threshold will receive disallowances only on the ineligible cases. Further, if the number of ineligible cases in the review that follows the program improvement plan is within the threshold, disallowances will be assessed only on those cases. If the number exceeds the threshold in the review following the program improvement plan, disallowances will be extrapolated to the universe.

V. Overview of child and family service reviews

A. *Development of the reviews*

The child and family service reviews proposed in this NPRM are the result of extensive piloting and consultation. Among the chief lessons learned from the developmental process are the following:

- Reviewing for outcomes, as opposed to procedural indicators alone, is more likely to lead to improvements in State programs;
- Three outcome areas of safety, permanency, and child and family well-being were identified and agreed upon

as the areas in which almost all outcomes associated with Federally-funded child and family services fit;

- Reviewing for documentation alone in case records is insufficient for evaluating outcomes and the quality of services;
- The pilots indicated that a smaller sample of cases reviewed more intensely yielded more information about outcomes than larger samples that involved only case record reviews;
- The pilots indicated that State self-assessment is a viable approach for identifying programmatic strengths and needs, for building on the community planning process begun through implementation of the Child and Family Services Plan (CFSP) planning requirements, and for enhancing Federal/State partnerships (The final rule on Foster Care Maintenance Payments, Adoption Assistance, and Child and Family Services published November 18, 1996, contains the requirements governing the CFSP (61 FR 58632).);
- The review process is an effective means of assisting States in examining the effects of practice innovations

and technical assistance and refining the indicators used to measure progress over time; and,

- A review team that includes State representatives from outside the State agency helps broaden the perspective of the review, supports locally-based partnerships between the State agency and the communities it serves, increases the likelihood that the review will be relevant to all populations served by the agency, and helps identify training needs in the State.

With these lessons in mind, our primary goal in revising the reviews for child and family services is to assist States in improving outcomes for children and families by identifying the strengths and needs within State programs and those areas where technical assistance can lead to program improvements. Supporting goals include: (1) reviewing for the actual outcomes of services as well as the procedures that support desirable outcomes; and (2) using the reviews to promote the integration of the range of Federally-funded child and family services programs.

In developing the NPRM, we have followed the statutory requirements closely when the statute has provided specific parameters for the reviews. Where we were required to make decisions about issues, such as the State plan requirements

subject to review and the criteria for determining substantial conformity, we have focused on the emphasis the statute places on program improvements. We have integrated the proposed review requirements with other requirements related to data collection and the CFSPs in order to reduce the burdens on States whenever possible. Finally, in emphasizing the importance of outcomes over procedure, we are proposing a review process that States can adapt to their ongoing self-evaluation and integrate into their own quality assurance efforts, apart from periodic Federal reviews.

We chose not to emphasize the penalty structure associated with the reviews. Rather, we have designed a review process that will lead to meaningful improvements in the outcomes of services delivered to children and families and will strengthen State and Federal collaboration. We have purposefully crafted the regulation so that penalties will only be imposed when States fail to make the necessary program improvements.

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B. Summary of the child and family service reviews

We are proposing to review State programs in two areas: (1) outcomes for children and families in the areas of safety, permanency, and child and family well-being; and (2)

systemic factors that directly impact the State's capacity to deliver services leading to improved outcomes.

The process we are proposing includes two stages: a State self-assessment and an on-site review. The State self-assessment will be completed by the State members of the review team, including staff of the State agency and community representatives, in collaboration with ACF Regional Offices. In the second phase, a representative team of Federal, State and community reviewers will review a small "discovery sample" of cases selected randomly and stratified by type of cases, based on the findings of the self-assessment. The reviews will examine cases which reflect a wide range of services provided by the State, e.g., child protective services, out-of-home and in-home services, but more emphasis will be placed on those cases reflecting State-specific issues identified in the self-assessment. Information on each case will be gathered from the case records as well as interviews with the children, parents, social worker, foster parent and service providers in the case. Systemic issues will be reviewed on-site, primarily through interviews with State and community stakeholders from within and outside the State agency.

As explained in the section-by-section discussion of the preamble, we are proposing to make "substantial conformity"

determinations for each outcome and systemic factor reviewed, rather than an overall determination of conformity for the State's entire title IV-B and IV-E program. To be determined to be in "substantial conformity," each outcome reviewed on-site must be rated "substantially achieved" in at least 90% of the cases examined in the first review, and 95% in the subsequent reviews. To be determined to be in "substantial conformity" for the systemic factors reviewed, each factor must be operating in accordance with applicable statutory requirements. Federal funds may be withheld from States that are determined to be in nonconformity. However, States first will be required to implement program improvement plans to correct areas of nonconformity and, if the plans are implemented successfully, funds will not be withheld.

We propose that States determined to be operating in substantial conformity be reviewed at five-year intervals and States not in substantial conformity be reviewed at three-year intervals.

VI. Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 and the Multiethnic Placement Act of 1994

On August 20, 1996, President Clinton signed the Small Business Job Protection Act of 1996. Section 1808 of this Act (section 1808), "Removal of Barriers to Interethnic Adoption," repeals and replaces the nondiscrimination provision of the Multiethnic Placement Act of 1994 (MEPA). Section 1808 prohibits denial of or delay in the placement of a child for adoption or foster care on the basis of race, color, or national origin of the adoptive parent, foster parent, or child involved. It also prohibits denying to any person the opportunity to become an adoptive or foster parent, on the basis of the race, color, or national origin of the person or child involved. This provision became a new title IV-E State plan requirement, section 471(a)(18) of the Act, effective January 1, 1997. Noncompliance with section 471(a)(18) constitutes a violation of title IV-E as well as a violation of title VI of the Civil Rights Act of 1964.

The diligent recruitment requirement at section 422(b)(9) of the Act in no way mitigates the prohibition on denial or delay of placement based on race, color or national origin. However, the statute is clear that the section 1808 prohibitions against delaying or denying placement based on race, color, or national origin have no effect on the application of the Indian Child Welfare Act of 1978.

In implementing the provisions of section 1808, we will identify potential violations during the conduct of child and family services reviews. We will refer cases so identified, as well as cases brought to our attention by any other means, to the Department's Office for Civil Rights (OCR) for investigation. Based on the OCR investigation in any such case, we will determine whether a violation of section 471(a)(18) has occurred. Under section 474(d) of the Act, States and other entities receiving title IV-E funding are subject to financial penalties and corrective action for such violations.

VII. Welfare reform legislation and title IV-E eligibility .

On August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was signed into law (Pub. L. 104-193). This law repealed the Aid to Families with Dependent Children (AFDC) program and replaced it with the Temporary Assistance for Needy Families (TANF) block grant. This change has implications for the title IV-E foster care program since title IV-E eligibility is predicated, in part, on the child's eligibility for AFDC. The PRWORA, as amended by the Balanced Budget Act of 1997 (Public Law 105-33), requires States to apply the AFDC eligibility requirements that were in effect in the State on July 16, 1996, when determining whether children are

financially eligible for Federal foster care. Consistent with this approach, we continue to use references which predate the passage of TANF, but are to be applied as they were in effect on July 16, 1996.

VIII. The Adoption and Safe Families Act of 1997

On November 19, 1997, the President signed into law the Adoption and Safe Families Act (ASFA) of 1997, Public Law 105-89. This legislation, passed by the Congress with overwhelming bipartisan support, represents an important landmark in Federal child welfare law. It establishes unequivocally that our national goals for children in the child welfare system are **safety, permanency, and well-being**. The passage of this new law affords us an unprecedented opportunity to build on the reforms of the child welfare system that have begun in recent years in order to make the system more responsive to the multiple, and often complex, needs of children and families. The Adoption and Safe Families Act embodies a number of key principles that must be considered in order to implement the law:

- **The safety of children is the paramount concern that must guide all child welfare services.** The new law requires that child safety be the paramount concern when making service provision, placement and permanency

planning decisions. The law reaffirms the importance of making reasonable efforts to preserve and reunify families, but also now clarifies instances in which States are not required to make efforts to keep children with their parents, when doing so places children's safety in jeopardy.

- **Foster care is a temporary setting and not a place for children to grow up.** To ensure that the system respects a child's developmental needs and sense of time, the law includes provisions that shorten the timeframe for making permanency planning decisions, and that establish a timeframe for initiating proceedings to terminate parental rights. The law also strongly promotes the timely adoption of children who cannot return safely to their own homes.
- **Permanency planning efforts for children should begin as soon as a child enters foster care and should be expedited by the provision of services to families.** The enactment of a legal framework requiring permanency decisions to be made more promptly heightens the importance of providing quality services as quickly as possible to enable families in crisis to address problems. It is only when timely and intensive services are provided to families that agencies and

courts can make informed decisions about parents' ability to protect and care for their children.

- **The child welfare system must focus on results and accountability.** The law is clear that it is no longer enough to ensure that procedural safeguards are met. It is critical that child welfare services lead to positive results. The law contains a number of tools for focusing attention on results, including an annual report on State performance; the creation of an adoption incentive payment for States, designed to support the President's goal of doubling the annual number of children who are adopted or permanently placed by the year 2002; and a requirement to study and make recommendations regarding additional performance-based financial incentives in child welfare.

We are proposing regulations in this NPRM for the following provisions in the ASFA:

- Section 471(a)(15) of the Act regarding reasonable efforts;
- Section 471(a)(20) of the Act regarding criminal records checks;

- Section 475(1) (E) of the Act regarding documentation of the State's efforts to make and finalize a child's placement when the permanency goal is adoption, guardianship, or some other permanent arrangement;
- Section 475(5) (C) of the Act regarding permanency hearings;
- Section 475(5) (E) of the Act regarding requirements to file or join a petition to terminate parental rights.
- Section 475(5) (F) of the Act regarding the date a child has entered foster care; and,
- Section 475(5) (G) of the Act regarding notice of reviews and hearings and an opportunity to be heard for foster parents, relative caregivers, and preadoptive parents.

The proposed title IV-E review only monitors eligibility for foster care maintenance payments. Therefore, those provisions in the ASFA which amend title IV-B, subpart 2, and the Adoption Assistance program will be regulated in a subsequent NPRM. We will propose regulations for the following ASFA provisions in the next NPRM:

- Title IV-B, subpart 2 of the Act regarding the Promoting Safe and Stable Families program;
- Section 471(a)(21) of the Act regarding health insurance coverage for children with special needs for whom an adoption assistance agreement is in effect; and,
- Section 473(a)(2)(C) of the Act regarding a child's continued title IV-E eligibility for adoption assistance in cases where an adoption disrupts or the adoptive parent(s) die.

ACF does not intend to issue regulations to implement the adoption incentive bonuses at section 473A of the Act because of the time-limited nature of the provision. Rather, we have provided guidance through policy issuance.

IX. Strategy for Regulating the Adoption and Safe Families Act of 1997

We have decided to regulate the provisions of ASFA and other recent statutory amendments through two NPRMs. This, the first NPRM, transmits ACF's proposed review systems for child and family services and title IV-E eligibility, proposes an enforcement strategy for the statutory

prohibitions regarding race preference in foster and adoptive placements, and addresses those provisions in the ASFA related to the foster care maintenance program. The second NPRM will propose codification of the remaining ASFA amendments to the Social Security Act. Clarification and interpretation required by the field to implement the time sensitive provisions in the ASFA will be addressed by policy issuances prior to codification in a final rule.

We considered issuing a single comprehensive NPRM which would encompass technical and programmatic changes to titles IV-B and IV-E and the review processes, but rejected that approach in favor of the alternative strategy for the following reasons:

- 1) ACF is required by statute to promulgate regulations to implement State plan compliance reviews. After extensive consultation with the field to develop these proposed review procedures and several years of pilot testing, it is critical that the field receive guidance on the proposed review processes without further delay;
- 2) The proposed review processes can easily accommodate revisions to program operation and policy; and,

- 3) ACF has a statutory obligation to enforce the provisions of section 471(a)(18) of the Act.

Soon after the enactment of the ASFA, we held focus groups in Washington, D.C. and in each of the 10 Federal regions to obtain input from the field on the implementation of the new law. We learned a great deal about the provisions in the law that require clarification and guidance. The section-by-section discussion in the preamble offers guidance on the intent of the ASFA and its implementation.

We want to be very clear about the effective dates in the ASFA. The provisions in the ASFA were effective on the date of enactment, November 19, 1997, except for those provisions which require action on the part of the State legislature. The ASFA establishes a delayed effective date (the first day of the calendar quarter following the first legislative session which follows the enactment of the ASFA) for States that must pass legislation to implement certain provisions. States may not wait until final regulations are promulgated to come into compliance with the ASFA provisions. States must adhere to the effective dates in the statute.

X. Section-by-section discussion of the NPRM

A. *Child and family service reviews*

Part 1355 - General

§1355.20 *Definitions.* We have amended 45 CFR 1355.20 to include definitions of new terms relevant to monitoring, including full review, partial review, and State self-assessment. We have added a definition of the National Child Abuse and Neglect Data System, since the term is not defined in other regulations (See Part X.B. for other definitional revisions in §1355.20.)

§1355.31 *Elements of the review system.* §1355.31 is added to specify the scope of the reviews covered in the NPRM.

§1355.32 *Timetable for the reviews.* This section specifies the review timetable for the initial and subsequent reviews as required by Section 1123A of the Social Security Act.

In paragraph (a), we are proposing a six-month period following publication of the final rule and prior to the commencement of Child and Family Service reviews so that States can become knowledgeable about the review process before the initial reviews begin in each State. The extended time period proposed for completing the initial reviews takes into account that: (1) States will need time to become familiar with and prepare for these new reviews; and (2) the ACF Regional Offices must schedule these reviews in all of

the States within each region, in conjunction with separate scheduling for the newly revised title IV-E eligibility reviews. We learned from our pilot reviews that approximately six months is required to prepare for and conduct a review that examines the quality of services and outcomes.

In paragraph (b), we describe the timetable for reviews following the initial review, in accord with the statutory requirement for less frequent reviews of States that are determined to be in substantial conformity. We propose that full reviews be conducted at five-year intervals in States found to be in substantial conformity. We also propose that the State self-assessment portion of the review be completed three years after a review in which a State is found to be in substantial conformity. We believe this requirement provides the State the opportunity for self-evaluation and an opportunity to make any needed adjustments in policy or practice prior to another full review.

In addition, we propose that reviews for States determined not to be in substantial conformity occur at three-year intervals. This proposal is based on the recognition that many States have technical assistance needs that will extend beyond a year or two in order for them to implement program

improvement plans designed to correct the areas of nonconformity in their child and family services program.

In paragraph (c), we implement the provision at section 1123A(b)(1)(C) of the Act regarding the reinstatement of more frequent reviews of States and also provide examples of information that might indicate that the State is not operating in substantial conformity. We propose that when information is received suggesting the possibility of nonconformity, ACF will conduct detailed inquiries prior to initiating an unscheduled review. ACF does not wish to pursue more frequent reviews than are necessary and will conduct detailed inquiries prior to initiating an unscheduled review. If the State, however, does not provide the additional information requested, ACF will proceed with a review. When a full review is not deemed necessary or appropriate, we propose that a targeted partial review be conducted of the areas indicated to be in nonconformity.

§1355.33 Procedures for the review.

In paragraph (a), we propose a two-phase review process and suggest that the joint State-Federal review team have multiple representation, including individuals and organizations outside the State agency with whom the State was required to consult in developing its State plan

(external members). Federal review team members will consist primarily of staff from ACF, but may also include staff from other agencies within HHS, including the Office for Civil Rights (OCR).

We received positive feedback from participants in the pilot reviews that this approach encourages Federal-State collaboration during the review, as well as during the development and implementation of program improvement plans. We found that a team with a more diverse composition:

- had a broader perspective of the extent to which outcomes were being achieved, and was more comprehensive in its identification of areas needing improvement within a State;
- would be better able to integrate the proposed review process with the CFSP planning process by including the external representatives in both processes and building on the existing consultation requirements in place;
- satisfied a repeatedly expressed need on the part of the focus group participants for a broad base of community involvement in the new review process, including representatives other than staff of the State agency; and

- may lead to increased opportunities for technical assistance from those involved in identifying the State's strengths and needs.

In paragraph (b), we describe the proposed State self-assessment process which is based on data, provided by ACF to the States in report format, from their own most recent submissions to the AFCARS and NCANDS systems. State review team members will review and analyze the data to evaluate the strengths and needs of the child and family services systems in the State. In promoting the principles of State flexibility and program improvement through the reviews, the analysis of the self-assessment will provide the focus for the on-site review by identifying particular aspects of State programs that need further review. This approach is proposed as an alternative to conducting standard reviews on similar populations in every State, absent any recognition of individual State needs. State self-assessments were used successfully to structure the on-site reviews around specific outcome areas, service areas, and systemic issues. We believe this approach will promote a more efficient use of State and Federal resources.

In paragraph (c), we describe the proposed on-site review process. The proposal that the on-site review be focused in specified geographic locations in the State, including the

State's largest city, reflects an approach used in all of the pilots. It provided members of the review team with opportunities to speak to local stakeholders and conduct face-to-face interviews with children and families, service providers, foster families and staff from various localities. Because the nation's large metropolitan areas are often characterized by complex social and organizational issues that affect large numbers of children and families, we propose that each State's largest metropolitan area be one of the locations selected for an on-site review.

The proposed approach of using various sources of information to determine substantial conformity with the outcomes and systemic factors is also based on the pilot reviews. The comparative experiences in the pilots revealed that the reviews yield findings of greater quality and higher accuracy when they include case reviews and interviews rather than rely solely on the case records.

The on-site review, by design, is qualitatively focused, reflecting our belief that a small sample that examines outcomes thoroughly will best promote the State/Federal partnerships and collaboration necessary to achieve program improvements through the reviews. We propose that the sample of cases be randomly selected and that the sampling plan be approved by the ACF designated official in order to

achieve an objectively selected sample. We have not prescribed a specific number of cases to be included in the sample, since the number will vary by State, depending upon the size of the State and the areas under review. However, we propose to select a relatively small sample, that is, 30 - 50 cases, and conduct an intense review, including interviews with the relevant parties in each case. In some pilot States, we used both the old review method of merely reading case records and the proposed method of reading case records and conducting interviews with families and other relevant parties. In those pilot States where both the old and the proposed review methods were deployed simultaneously, there was an over-reliance on the proposed method to reach conclusions about the status of outcomes in the States. Conducting interviews with families and other relevant parties resulted in a more balanced approach by the review team when considering the State's success in achieving outcomes for families.

In paragraph (d), we propose that partial reviews be jointly planned and conducted by the State and ACF. Partial reviews will be targeted to the nature of the concern.

We believe the stated emphasis on program improvement will best be served through timely feedback to the States on the review findings. Therefore, in paragraph (e), we propose a

time frame of 30 calendar days in which to notify the State of ACF's determination as to whether the State is operating in substantial conformity. However, the letter of notification will not include a detailed report of the review. Rather, it will summarize and confirm the findings of the review, many of which will have been assembled and reported to the State at the conclusion of the on-site review. We propose that the substance of findings related to a determination of nonconformity be expounded upon and developed in the context of the program improvement plan, which will then serve as a guide to the State in achieving substantial conformity (see section 1355.35).

§1355.34 Criteria for determining substantial conformity.

This section describes the criteria which will be used to determine a State's degree of conformity with specified State plan requirements for each outcome and systemic factor of the State's service delivery system that undergoes review.

We propose to base conformity on the specific outcomes and systemic factors reviewed, rather than on the State program as a whole. Accordingly, we have limited the State plan requirements subject to review to those requirements related specifically to outcomes and the delivery of improved

services. We are, in effect, proposing that conformity with these requirements constitutes "substantial conformity," rather than reviewing for and requiring some percentage of compliance with all of the title IV-B and IV-E State plan requirements. Also, making determinations of substantial conformity based on specific outcomes and systemic factors will permit States to take advantage of technical assistance opportunities to focus on those aspects of their programs needing improvement.

In paragraphs (a)(1)(i) and (ii), we propose to determine the State's substantial conformity with applicable CFSP requirements based on: (1) the achievement of the seven outcomes specified in paragraph (b); and (2) the functioning of seven core systemic factors directly related to the State's capacity to deliver services leading to improved outcomes, as specified in paragraph (c). In paragraph (a)(1)(iii), we propose that a review and analysis of the aggregate data in the State self-assessment should be consistent with, and support, the findings of the on-site review. Significant discrepancies between the aggregate data and the on-site review findings may be a contributing factor in determining that a State is not in substantial conformity.

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In paragraph (b) (1), we link substantial conformity to the outcomes for children and families, and list the seven outcomes that are subject to review. These outcomes were derived from discussions with numerous focus groups, consultation with experts in the field, and from an extensive review of the literature on the outcomes for children and families served by the programs under review. The pilot reviews have demonstrated them to be appropriate outcomes to measure.

In paragraph (b) (2), we propose that a State's level of achievement (i.e., "substantially achieved," "partially achieved," or "not achieved") with regard to each outcome, as determined by the review team, reflect the extent to which a State has implemented the CFSP requirements and assurances subject to review. We have specified those CFSP requirements that are directly related to the outcomes that will undergo review, including the new title IV-B State plan requirement to make effective use of cross-jurisdictional resources to place children in adoptive homes.

In paragraph (b) (2) (vii), the proposed review of the title IV-E requirement regarding reasonable efforts is not a duplication of the review of reasonable efforts determinations performed in the title IV-E foster care eligibility reviews. We are not proposing to review for

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outcome

reasonable efforts determinations in court orders or other court documentation, but for the actual services provided to prevent removals, facilitate reunification, ^{and} (or) in conformance with the ASFA, to make and finalize alternate permanent placements. This State plan requirement clearly supports two of the outcomes proposed for review: 1)

children are protected from abuse and neglect in their homes whenever possible; and 2) children have permanency and stability in their living situations.

In paragraph (b) (3), we propose that in order for a State to be determined to be in substantial conformity, each outcome to be examined must be rated as "substantially achieved" in at least 90 percent of the cases reviewed on-site in the initial review and 95 percent in subsequent reviews. For example, if 40 cases are reviewed as part of an initial on-site review, each outcome must have been "substantially achieved" for at least 36 (90%) of these cases as determined by the review team. The rationale for the phased-in standard of outcome achievement is that States will need time to focus their resources on program improvements and the new approach to the reviews and may not be able to conform to a 95 percent standard initially. However, given the goal of the proposed review process to support practice improvements over time, we believe a 95 percent standard

Drop from 95-
90% of
cases --
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better reflects the ongoing quality of outcomes we are promoting.

The on-site review instruments are designed to guide reviewers in determining the degree of outcome achievement. Specific items in the on-site review instruments are indexed to each outcome. These items will be examined collectively from a case-specific qualitative level in determining if each outcome has been or is being achieved at a satisfactory level, that is, "substantially achieved." We have published the items indexed to the outcomes at Attachment A, at the end of this preamble, in order to give States a more specific idea of what is reviewed during the on-site process. We want to be clear, however, that the items are not being published as part of the proposed rule because they are subject to change as the field learns more about how particular issues affect outcomes for children and families.

In the pilot reviews, we invested considerable effort in preparing reviewers to collect and consider the information needed to make decisions about outcome achievement. In addition, we assembled a cross-section of representatives from within and outside the State agency and made numerous revisions to the instrument to increase the likelihood of objective conclusions. We propose to require that

conclusions about outcomes be made on the basis of several perspectives, including those of the children, parents, social worker and service providers involved in the cases reviewed, in order to provide us with more comprehensive information about each case undergoing review.

We believe that if we are to achieve the goal of improved services, reviewing for outcomes in the manner we are proposing is necessary. In each of the pilots, reviewers were able to apply the criteria to the outcomes in a manner that led to decisions considered by the review team to be valid. Further, the compilation of findings around outcomes by the review team was generally consistent with the State agency's perception of the strengths and needs of its programs which, we believe, adds further validity to the approach we are proposing.

In paragraph (c), we propose also to link substantial conformity to a State's implementation of those CFSP requirements clearly related to delivering child welfare services which lead to improved outcomes. This basis for establishing substantial conformity is in addition to the review of outcomes. We have identified the seven core systemic factors that we propose to examine, along with the specific criteria that will be reviewed to determine if each systemic factor is operating in substantial conformity. The

factors we have chosen to examine emerged from a much longer list that was refined over the course of the pilot reviews. The systemic factors to be reviewed are those that seemed to most critically influence agency capacity at both the State and local levels.

The nature of the systemic factors and criteria for determining substantial conformity does not accommodate measurement at an interval level, e.g., percentage of achievement. We are, therefore, proposing that the review team apply specific criteria associated with each factor and determine whether the State is operating in substantial conformity with the CFSP requirements related to each factor. In paragraphs (c)(1) through (7), we have identified the components of each systemic factor that will be examined. The factors include: 1) the Statewide information system; 2) the case review system (which incorporates the new requirements in the ASFA for permanency hearings, termination of parental rights, and notice of hearings for foster and preadoptive parents); 3) the quality assurance system (which includes the new State plan requirement to establish and maintain quality standards for children in foster care); 4) training; 5) service array (including the new services that must be provided under title IV-B subpart 2, i.e., time limited reunification services and post-legal adoption services); 6) agency



responsiveness to the community; and 7) foster/adoptive
parent licensing, recruitment, and retention (which includes
the new State plan requirements for criminal record checks
and plans for effective use of cross-jurisdictional
resources for making adoptive placements).

Since these factors relate to systemic issues within State agencies, the degree to which they are operating in substantial conformity with CFSP requirements is a decision made with input from the entire review team. The decision will be based on information contained in the State self-assessment, as well as interviews with a broad cross-section of internal and external stakeholders at the State and local levels. In proposing the criteria to evaluate each systemic factor, we have worked to stay within the limits of the statutory and regulatory language related to the factors.

With regard to the case review system required in section 422 and defined in section 475 of the Act, we will not base substantial conformity on the documentation of these requirements for individual children as was the practice in previous section 427 reviews. Rather, the extent to which the State has in place a case review system that effectively promotes desirable safety, permanency, and well-being outcomes for the children and families served by the State will determine the degree of conformity.

We propose in paragraph (d) that the review instruments be provided to all States when the final rule becomes effective. This will assure that States are aware of the methodology that will be used to make determinations related to outcome achievement and the functionality of systemic factors.

§1355.35 Program improvement plans.

This section describes the requirements for developing, implementing and reviewing State program improvement plans and for providing technical assistance to States in implementing the program improvement plans. It implements the requirement in section 1123A(b) (4) of the Act that States found not to be in substantial conformity be afforded the opportunity to develop and implement a corrective action plan. We are proposing the term "program improvement plan" as an alternative to corrective action plan, believing that it better reflects the principles of program improvement and State/Federal partnerships that we are attempting to cultivate through the reviews.

In paragraph (a) (1) we propose to require that the program improvement plan be developed jointly between the State and HHS, consistent with other regulatory requirements that the State plan be developed jointly, and in keeping with the

desire to promote State and Federal partnerships through the reviews.

In paragraphs (a)(2) through (5), we describe the required content of the program improvement plans, specifically that the plans address the areas of nonconformity and identify the activities, time frames, technical assistance and evaluations needed to achieve substantial conformity.

In paragraph (b), we propose the option of a voluntary program improvement plan for States that meet the criteria for substantial conformity but yet have areas where program improvements are needed, and we describe the requirements for such voluntary plans.

In paragraph (c)(1), we propose that a State's program improvement plan be approved in accordance with section 1123A(b)(4)(A) of the Act. In addition, we propose that a State submit its plan for approval within 60 days following receipt of the written notice of nonconformity so that a State found to be in nonconformity may receive prompt assistance in achieving program improvements.

In paragraph (c)(2), ACF will approve the plan if it meets the requirements for program improvement plans described in this section. If the plan does not meet the requirements