

process. We have taken the opportunity to review these standards in the context of ACF's overall review strategy, and determined that some changes are warranted. The following paragraphs highlight the significant changes which we are proposing in this section, and the underlying rationales.

§1356.71(b) Composition of review team and preliminary activities preceding an on-site review.

In paragraph (b) (1), we propose that State agency staff participate in eligibility reviews as part of the review team. Our experience when conducting pilot reviews in fiscal years 1995, 1996, and 1997 in conjunction with State staff proved to be an excellent example of how Federal and State staff can work together as partners. The experience of reviewing case records to ascertain whether appropriate documentation was in the record was often as useful and enlightening to State staff as it was to their Federal counterparts. As a result of their participation, State representatives could more easily pinpoint deficiencies and plan corrective action accordingly. Federal staff were able to provide immediate technical assistance to State staff as issues presented themselves, thereby increasing their knowledge base.

Paragraph (b) (2) proposes that the State agency provide ACF with the complete payment history for each of the 88 sample and oversample cases (or 165 cases, if a second review is warranted) prior to the on-site review. This information will enable ACF at the exit conference to provide the State agency with preliminary estimates of the potential disallowance (if any) of title IV-E funds based on the number of cases initially determined to be ineligible. Access to this information early in the review process will also prevent later delays in the calculation of final disallowances and the preparation of the final report.

§1356.71(c) Sampling guidance and conduct of review.

We propose that data reported in the Adoption and Foster Care Analysis and Reporting System (AFCARS) and transmitted to ACF by State agencies for the most recent reporting period be used by ACYF statisticians to select the title IV-E foster care sample of children to be reviewed. The "period of review" will coincide with the AFCARS reporting period, which is currently six months in duration. This procedure will reduce the burden on States (in the past, some States had elected to draw their own samples), promote uniformity in sample selection, and utilize the AFCARS database in a practical and beneficial way. If the AFCARS data for the most recent reporting period are not available

or are deficient, an alternative sampling frame will be selected in conjunction with the State agency for the period of time comparable to the most recent AFCARS reporting period.

We originally planned to use a "discovery" sampling methodology with respect to the initial review. However, by definition, this would have resulted in a State being in non-compliance if one or more cases were found to be ineligible by the review team. Therefore, after deliberating over various combinations of sample sizes and critical numbers of ineligible cases, a more reasonable "acceptance" sampling methodology requiring a sample size of 80 (plus a 10 percent oversample of eight cases) with a critical number of eight (ineligible cases) is proposed based on the following information.

According to Appendix D: Table for Determining Minimum Sample Size and for Evaluating Attributes Sample Results in Practical Statistical Sampling for Auditors (A copy is reprinted at Attachment B at the end of this Preamble with permission of the publisher) by Arthur J. Wilburn, there is an 88 percent probability that the population ineligibility case error rate (case error rate) in a universe size that exceeds 1000 is less than 15 percent when the number of ineligible cases is less than or equal to eight. (Wilburn's

text is found in a 1984 publication by Marcel Dekker Inc. called STATISTICS: Textbooks and Monographs series, volume 52). This probability is sufficiently high for ACF to propose that a case error rate of less than 15 percent be utilized as the standard by which States will be determined to be in compliance. We are proposing a higher case error rate than that previously used in title IV-E reviews (the previous standard was a 10 percent error rate) in recognition of the fact that States will need some time to modify procedures and/or implement system modifications to comply with the proposal requiring documentation of judicial determinations of "reasonable efforts" to reunify a child and family, to make and finalize a permanent placement when the case plan goal is not reunification, and that reasonable efforts to prevent a removal or to reunify a child with his or her family are not required. We are proposing that, after a three-year transition period, the case error rate threshold revert to less than 10 percent, with the critical number of ineligible cases equal to four in a sample of 80 cases. Under the proposed rule, States in which cases were determined to be ineligible would be subject to disallowances equivalent to the amount of payments associated with those cases for the entire period of time they have been determined to be ineligible.

Does this
higher error
rate seem
low?

We also propose that States in which ACF has made a final determination of substantiated ineligibility for nine or more cases undergo a second eligibility review following the completion of their program improvement plans (see paragraph (i) of this section). It is anticipated that the successful implementation of the program improvement plan will contribute significantly to the correcting of deficiencies identified during the first review and, as a consequence, result in smaller disallowances. Upon completion of the subsequent review consisting of 150 cases, we propose that disallowances be made based on an extrapolation from the sample to the universe of payments made during the period reviewed. (This larger sample size is necessary in order to accommodate the extrapolation procedure and ensure its statistical validity). Critical values that will determine whether an extrapolated disallowance will be assessed against the State will be the same as those utilized in previous eligibility reviews to determine whether a stage two review would be conducted, that is, both the case and dollar error rates will have to exceed 10 percent. (Case and dollar error rates are determined by dividing the number of cases in the sample, and the total of their associated payments, by the number of ineligible cases and the total of their associated payments, respectively). If either or both of these error rates is less than 10%, there will be no extrapolation and the disallowance amount will be computed

only on the basis of payments associated with ineligible cases for the period of time they have been determined to be ineligible.

§1356.71(e) Review instrument.

The eligibility review checklist which has been used in past on-site reviews has undergone significant modification in order to accommodate policy changes reflected in this proposed rule. It has been repeatedly tested during pilot reviews conducted by ACF in fiscal years 1995, 1996, and 1997. State agencies and ACF Regional Offices participating in these reviews were asked to evaluate the checklist and provided comments on its format, language, and content. ACF will make available to the States copies of the checklist upon publication of the final rule.

§1356.71(f) Eligibility determination - child.

In this paragraph, we propose that the case record contain proper and sufficient documentation, in accordance with paragraph (d)(1) to verify a child's eligibility.

§1356.71(g) Eligibility determination - provider.

In order to ascertain that children are being properly placed in foster care provider facilities which are in compliance with statutory requirements contained in sections 472(c) and 471(a)(20) of the Act, we propose that the State agency make available pertinent licensing files to the review team. These files must contain the licensing history, including documentation in the form of letters of approval or certificates of licensure/approval, and substantiate that for each case being reviewed the facility(ies) in which the child is placed is(are) licensed or approved (during the period of care under review) by the agency in the State responsible for this activity. The licensure or approval must be in accord with standards established by the State which are consistent with recommended standards of national organizations for the licensure of foster homes and institutions and include documentation that safety requirements per §1356.30 have been met. If the licensing file does not contain sufficient information to support a child's placement in a facility, as determined by the reviewer, then the State agency may provide supplemental information via access to other resources, for example, a computerized database. Failure to provide appropriate documentation supporting a child's placement in a properly licensed or approved facility will result in a finding of ineligibility for the case for a specified period of time. In determining the period of

ineligibility, any foster care home or facility that is licensed for a portion of a month will be considered to have been licensed that entire month.

§1356.71(h) *Standards of compliance.*

In this section, we propose definitions of "substantial compliance" and "non-compliance" so that ACF will be able to make this determination, and so that State agencies will know beforehand the standard to which they must adhere. When discussing what a reasonable standard of compliance might be for States to meet, we considered retaining a 10 percent error rate which had been the standard used in earlier reviews to determine whether or not a State had to undergo a stage two review. If we apply this standard in future reviews where we plan to examine a sample of 80 foster care cases, it means that, in accordance with "acceptance" sampling methodology, a State's case records could contain no more than four errors (ineligible cases) if it is to be in "substantial compliance" with statutory and regulatory eligibility requirements. This determination, in conjunction with the recognition that States in the future will need to document judicial determinations of "reasonable efforts" to reunify a child and his/her family and to make and finalize alternate permanent placements, leads us to believe that maintenance of the 10 percent error rate for

the initial review would be too stringent under these circumstances. Therefore, we propose as a new standard an acceptable error rate of less than 15 percent, thus permitting a State to have as many as eight errors (ineligible cases) within a sample of 80 cases and still be in "substantial compliance" for its initial review. However, we propose that three years after the date the final regulation becomes effective, this error rate decrease to 10 percent based on the expectation that States will have had sufficient time to modify their procedures to accommodate the new requirements regarding the documentation of judicial determinations of "reasonable efforts" to reunify the family and to make and finalize alternate permanent placements.

§1356.71(i) Program improvement plans.

We propose in paragraph (i)(1) to require that States determined not to be in substantial compliance develop a program improvement plan designed to correct the areas of non-compliance, and that it be developed jointly between the State and ACF in keeping with the desire to promote State and Federal partnerships through the reviews. Under the former title IV-E review process, ineligible title IV-E payments were identified and, if claimed by States, were subsequently disallowed. While this procedure, in most

cases, allowed for the recovery of funds by ACF, it did not necessarily lead to correcting the deficiencies identified by reviewers. We propose that the program improvement plan identify action steps to be taken by the State to correct deficiencies identified by the review team, and that each action step have a projected completion date which will not extend more than one year from the date the program improvement plan is approved by ACF. (When a legislative change is necessary to bring a State into substantial compliance, an extension of the one-year timeframe may be negotiated between the State agency and ACF). This will assure that proper attention is given to correcting deficiencies in a timely manner. In this way, by identifying the problems, proposing solutions, and implementing corrective action, we expect to remove the basis for future adverse findings of non-compliance.

Approval of the program improvement plan means that ACF is in agreement with the information provided within it, and does not mean that a State can be assured of being in "substantial compliance" following a subsequent review of its case records.

In paragraph (i)(2), we propose that the State agency submit a program improvement plan to ACF within 60 days after receiving notification that it is not in substantial

compliance. We believe a period of 60 days is adequate for a program improvement plan to be developed, since the on-site review will have identified the reasons for disallowing certain cases, and it is our intention to convey this information to the State agency verbally at the exit conference as well as in the letter of notification following the review. However, if the State agency and ACF need more time to submit and/or review additional documentation in support of cases determined to be ineligible, a 30-day extension may be granted to accommodate this task. We would appreciate comments as to whether the time frame for the joint development of the program improvement plan is adequate as proposed.

§1356.71(j) Disallowance of funds.

We propose that the amount of funds to be disallowed be determined by the extent to which a State is not in compliance with eligibility requirements. A State which is in "substantial compliance" would have its disallowance calculated on the basis of the number of actual cases reviewed and found to be ineligible. We propose that the disallowance be computed on the basis of payments associated with the ineligible cases for the entire period of time that each case has been determined to be ineligible. Thus if, for example, a case was deemed ineligible on the basis that

a judicial determination regarding "contrary to the welfare" had not been properly made at the time a child was removed from home, all title IV-E payments which were claimed for this case from the time of removal would be disallowed. For States found to be in "non-compliance" after the first review (i.e., not in substantial compliance), we propose that they have a disallowance calculated on the same basis, but also be required to develop and implement a program improvement plan and undergo a second review.

Since the implementation and completion of a program improvement plan may take as long as one year, we propose that a second review be conducted during the AFCARS reporting period which immediately follows the latest projected completion date approved in the program improvement plan. For example, if there were three action steps outlined in a program improvement plan with completion dates of January 1, April 1 and July 1, 1998, the second review must be conducted sometime between October 1, 1998 and March 31, 1999. This should allow sufficient time for the planning and preparation that needs to take place by Federal and State agencies prior to an on-site review, as well as provide an opportunity for the review team to examine cases which will have been impacted by a State's corrective action. The review will provide a basis for determining if a State has successfully corrected

deficiencies identified in the program improvement plan and continued to meet all other eligibility requirements since the first review was conducted. If the review team determines that a State is in "substantial compliance", a second disallowance will be calculated on the basis of actual cases reviewed and found to be ineligible. We propose that this disallowance be computed on the basis of payments associated with the cases from the point in time from which they have been determined to be ineligible.

If a State remains in non-compliance, we propose that the disallowance be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period under review (currently six months). Thus a State should be able to forestall a potentially significant disallowance by focusing its efforts on improving specified aspects of operations identified as needing strengthening. However, in any event, we anticipate that disallowances resulting from the second review of cases made in States determined to be in non-compliance will be smaller than those taken in the past by ACF. This is due to a number of reasons: 1) the required implementation of a program improvement plan for States that are in non-compliance; 2) the provision of technical assistance (upon request) to a State agency by ACF; 3) the State agency's own efforts to correct the deficiencies identified in its

program improvement plan; and 4) the fact that any extrapolated disallowance will be for a six-month period of time (corresponding with the reporting period of AFCARS unless, or until such time as, it changes), rather than a one-year period of time as has been the case in past years. More important than the monetary benefits that may accrue to States from ACF's new monitoring approach, however, is the recognition that the protections afforded children under title IV-E are likely to be provided and subsequently documented by States in the future in a more consistent manner.

In paragraph (j)(3), we specify that the State agency will be liable for applicable interest on the amount of funds disallowed by the Department, in accordance with regulations at 45 CFR 30.13.

XII. Impact analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed

Rulemaking 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. In conformance with this legislation, we are proposing 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.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant number of small entities" an analysis must be prepared describing the rule's impact on small entities. "Small entities" are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. These regulations do not affect small entities because they are applicable to State agencies that administer the child and family services programs and the foster care maintenance payments program.

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 \$100,000,000 or more (adjusted annually for inflation). 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 \$100,000,000 or more. We anticipate that one-third (17) of the States will be reviewed under

both review procedures each year, for an annual cost of \$225,420. This estimate was based on the burden hours associated with each information collection identified in the "Paperwork Reduction Act" section. We did not include State travel costs in the estimate because these costs will vary significantly based on how a State chooses to structure its participation in the reviews.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule. This NPRM contains information collection requirements in certain sections which the Department has submitted to OMB for its review.

The sections that contain information collection requirements are: 1355.33(b) on State self-assessments, and (c) on submission of data; 1355.35(a) on program improvement plan; 1355.37(b) and (c) on corrective action plans; 1356.21(g)(1) on case plan requirement; and 1356.71(i) on program improvement plan. Section 1356 on State plan document and submission requirements, in which no changes

are being made with regard to information collection at this time, has an OMB approval number of 0980-0141.

The respondents to the information collection requirements in this rule are State agencies. The Department needs to require this collection of information: 1) in order to review States' compliance with the provisions of the statute and implementing regulations of title IV-E of the Act; and 2) effectively implement the statutory requirement at section 1123A of the Act which requires that regulations be promulgated for the review of child and family services programs, and foster care and adoption assistance programs, for conformity with State plan requirements.

The frequency of State responses will vary. It is known that each State will have to do self assessments at least once every three years. States not in substantial conformity must submit a program improvement plan. Case plans for title IV-E must be done in accordance with the case review system. The following table provides annual estimates of the burden hours associated with each collection.

Collection	Number of Respondents	Number of Responses	Average Burden Hours Per Response	Total Burden Hours
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1355.33(b) - State Agency Self Assessment	17 - State Agencies Administering the Title IV-B & E Programs	1	240	4,080
1355.33(c) - On-Site Review	17 - State Agencies Administering the Title IV-B & E Programs	35	8	4,760
1355.35(a) - Program Improvement Plan	17 - State Agencies Administering the Titles IV-B & IV-E Programs	1	80	1,360
1355.37(b) and (c) - Corrective Action Plan	5 - State Agencies Administering Titles IV-B and IV-E	1	80	400
1356.21(g) - Case Plan OMB No.: 0989-0140, Expiration Date: 2/28/00	468,000	1	4	1,872,000
1356.71(i) - Program Improvement Plan	17 - State Agencies Administering the Title IV-E Program	1	63	1,071

The Administration for Children and Families will consider comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the FEDERAL REGISTER. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Laura Oliven.

List of Subjects

45 CFR Part 1355

Adoption and foster care, child welfare, grant programs -
social service programs.

45 CFR Part 1356

Adoption and foster care, administrative costs, fiscal
requirements (title IV-E).

ATTACHMENT A To The Preamble

(For discussion on §1355.34)

INDEX OF PERFORMANCE INDICATORS TO OUTCOMES

1. Safety Outcome 1: Children are protected from abuse and neglect in their homes whenever possible.

Performance Indicators:

- Services to family to protect child(ren) in home
- Current risk of harm to child
- Child deaths due to maltreatment

2. Safety Outcome 2: The risk of harm to children will be minimized.

Performance Indicators:

- Timeliness of initiating investigations
- Repeat maltreatment
- Current risk of harm to child
- Child maltreatment in foster care
- Child deaths due to maltreatment

3. Permanency Outcome 1: Children will have permanency and stability in their living situations.

Performance Indicators:

- Foster care re-entries
- Stability of foster care placement
- Unachieved permanency goals
- Independent living services for youths >16 y.o.
- Use of long term foster care
- Effectiveness of adoption services

4. Permanency Outcome 2: The continuity of family relationships, culture and connections will be preserved for children.

Performance Indicators:

- geographic barrier?*
- Proximity of current placement
 - Placement with siblings
 - Visiting with parents and siblings in foster care
 - Cultural connections and preservation
 - Relative placement
 - Current relationship of child in care with parents

5. Well-Being Outcome 1: Families will have enhanced capacity to provide for their children's needs.

Performance Indicators:

- Needs and services of child, parents, foster parents
 - Child and family involvement in case planning
 - Current relationship of child in care with parents
 - Worker visits with child
 - Worker visits with parents
6. Well-Being Outcome 2: School-age children will have educational achievements appropriate to their abilities.

Performance Indicators:

- Educational needs of the child
7. Well-Being Outcome 3: Children will receive adequate services to meet their physical and mental health needs.

Performance Indicators:

- Physical health of the child
- Mental health of the child

*achievement
drop apt, etc?*

ATTACHMENT B To the Preamble for discussion on §1356.71(b)

PROBABILITY THAT ERROR RATE IN UNIVERSE
Page 11 SIZE OF OVER 1000 IS LESS THAN:

SIZE OF SAMPLE EXAMINED	NO. OF ERRORS FOUND	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	12%	14%	16%	18%	20%
40	0	33.10	55.43	70.43	80.46	87.15	91.58	94.51	96.44	97.70	98.52	99.40	99.76	99.91	99.96	99.99
	1	6.07	19.05	33.85	47.90	60.10	70.10	77.99	84.06	88.60	91.95	94.12	95.20	96.19	96.94	97.46
	2	0.75	4.57	11.78	21.45	32.33	43.35	53.75	63.06	71.06	77.72	83.20	87.24	90.55	93.31	95.21
	3	0.07	0.83	3.14	7.48	13.82	21.73	30.63	39.93	48.08	55.69	62.22	67.82	72.16	75.58	78.16
	4	0.01	0.12	0.67	2.10	4.80	8.96	14.54	21.32	28.97	37.10	45.31	53.11	60.22	66.81	72.44
	5		0.01	0.12	0.49	1.39	3.09	5.82	9.67	14.65	20.63	26.64	32.46	38.46	44.31	49.87
	6			0.02	0.10	0.34	0.91	1.99	3.76	6.20	9.95	15.00	20.46	26.31	32.41	38.71
	7															
	8															
	9															
	10															
	11															
50	0	39.50	63.50	78.19	87.01	92.31	95.47	97.34	98.45	99.10	99.49	99.83	99.95	99.98	100.00	100.00
	1	8.94	26.42	44.47	58.95	72.06	81.00	87.35	91.73	94.68	96.62	98.00	99.12	99.83	99.94	99.98
	2	1.38	7.84	18.92	32.33	45.95	58.38	68.92	77.40	83.95	88.83	92.87	97.79	99.10	99.65	99.87
	3	0.16	1.78	6.28	13.91	23.96	35.27	46.73	57.47	66.97	74.97	80.56	85.30	89.68	93.64	96.43
	4	0.02	0.32	1.68	4.90	10.36	17.94	27.10	37.11	47.23	56.84	65.21	72.72	79.81	86.01	90.15
	5		0.05	0.37	1.44	3.78	7.76	13.51	20.81	29.28	38.30	46.47	53.66	60.23	66.71	72.20
	6		0.01	0.07	0.36	1.18	2.89	5.83	10.19	15.96	22.90	29.35	35.16	40.81	46.19	50.66
	7															
	8															
	9															
	10															
	11															
60	0	45.28	70.25	83.92	91.37	95.39	97.56	98.72	99.33	99.66	99.82	99.95	99.99	100.00	100.00	100.00
	1	12.12	33.81	54.06	68.78	80.85	88.21	92.91	95.92	97.58	98.62	99.17	99.67	99.96	99.99	100.00
	2	2.24	11.87	26.85	43.24	58.26	70.60	80.02	86.83	91.54	94.70	96.84	98.32	99.10	99.53	99.80
	3	0.31	3.22	10.57	21.87	36.27	48.87	61.27	71.71	80.00	86.26	90.99	97.50	99.10	99.60	99.90
	4		0.73	3.40	9.17	18.68	28.11	41.15	52.98	63.73	72.90	80.12	85.87	91.27	95.93	99.61
	5		0.13	0.91	3.25	7.87	14.98	24.20	34.74	45.71	56.28	64.10	70.23	75.35	79.05	82.79
	6			0.21	0.99	2.97	6.71	12.50	20.20	29.27	39.36	50.08	61.29	72.59	83.27	92.92
	7															
	8															
	9															
	10															
	11															
70	0	50.52	75.09	88.14	94.28	97.24	98.60	99.38	99.71	99.86	99.94	99.99	100.00	100.00	100.00	100.00
	1	15.53	40.96	62.47	77.51	87.03	92.81	96.10	97.93	98.92	99.45	99.86	99.97	99.99	100.00	100.00
	2	3.34	16.50	35.08	53.44	68.63	79.87	87.50	92.60	95.72	97.58	98.80	99.55	99.90	99.99	100.00
	3	0.54	5.19	15.87	30.71	46.61	61.15	73.07	82.10	88.53	92.88	97.48	99.19	99.76	99.93	99.98
	4		0.07	1.32	5.93	14.85	27.21	41.13	54.77	66.80	76.61	84.12	90.36	95.51	99.16	99.92
	5			0.28	1.86	6.12	13.72	24.27	36.58	49.24	61.06	71.23	80.94	89.92	97.64	99.17
	6			0.50	0.50	2.18	6.04	12.61	21.75	32.70	44.40	55.82	67.86	77.57	84.50	91.81
	7															
	8															
	9															
	10															
	11															

APPENDIX D

PROBABILITY THAT ERROR RATE IN UNIVERSE
Page 12 SIZE OF OVER 1000 IS LESS THAN:

SIZE OF SAMPLE EXAMINED	NO. OF ERRORS FOUND	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	12%	14%	16%	18%	20%
70 (Cont)	7		0.12	0.68	2.34	5.80	11.54	19.54	29.33	40.12	61.33	78.13	89.04	95.06	98.00	
	8		0.02	0.19	0.80	2.38	5.49	10.54	17.50	26.37	40.66	60.03	80.55	90.36	95.83	
	9			0.06	0.25	0.88	2.36	5.14	9.00	15.86	22.86	32.46	45.10	63.23	81.68	
	0	55.25	80.14	91.28	96.18	98.35	99.29	99.70	99.87	99.95	99.98	100.00	100.00	100.00	100.00	100.00
	1	19.06	47.70	68.82	83.46	91.40	95.66	97.89	98.99	99.53	99.78	99.96	99.99	100.00	100.00	100.00
	2	4.66	21.56	43.19	62.52	78.94	88.56	92.50	95.96	97.80	98.90	99.74	99.94	100.00	100.00	100.00
	3	0.87	7.69	21.93	38.84	57.16	71.42	81.50	89.11	94.60	96.47	98.99	99.74	99.90	99.99	100.00
	4	0.13	2.24	9.28	21.64	37.11	52.83	66.07	77.65	85.80	91.20	97.01	99.10	99.94	99.99	100.00
	5	0.55	3.33	10.12	21.00	34.78	49.18	62.50	73.66	82.31	92.91	97.52	99.76	99.99	99.99	100.00
80	6	0.11	1.00	4.12	10.53	20.39	32.73	46.03	58.79	69.96	80.92	90.28	96.36	98.82	99.70	100.00
	7		0.28	1.47	4.66	10.68	19.64	30.89	43.24	55.44	67.54	78.77	87.97	94.47	99.47	100.00
	8			0.47	1.84	5.02	10.66	18.88	29.21	40.73	53.20	66.64	80.47	90.00	96.00	100.00
	9			0.13	0.66	2.13	5.24	10.51	18.10	27.06	40.61	55.88	71.43	82.88	97.13	100.00
	10				0.21	0.82	2.35	5.36	10.81	17.84	26.28	40.45	55.28	70.43	84.55	94.55
	0	59.53	83.77	93.56	97.48	99.01	99.62	99.86	99.96	99.99	99.99	100.00	100.00	100.00	100.00	100.00
	1	22.73	53.96	75.60	87.95	94.33	97.43	98.97	99.51	99.80	99.92	99.97	99.99	100.00	100.00	100.00
	2	6.19	26.68	50.90	70.30	83.36	91.20	95.56	97.85	98.90	99.54	99.91	99.92	99.99	100.00	100.00
	3	1.29	10.68	23.49	48.74	66.42	79.55	88.28	93.50	96.65	98.31	99.61	99.90	99.98	99.99	100.00
90	4	0.22	3.48	13.41	29.20	47.00	63.36	78.31	88.56	91.61	95.35	98.78	99.65	99.95	99.99	100.00
	5	0.96	5.39	15.19	29.48	46.60	60.84	73.52	83.06	89.68	96.45	97.58	99.77	99.97	99.99	100.00
	6	0.23	1.88	6.92	16.39	29.53	44.35	58.69	71.06	80.78	92.00	94.70	99.31	99.96	99.96	100.00
	7		0.57	2.79	8.13	17.23	29.45	43.22	50.81	68.86	85.99	93.53	96.27	99.70	99.87	100.00
	8			0.16	1.00	3.62	9.08	17.81	24.27	42.20	55.13	70.65	82.61	90.21	99.22	99.65
	9			0.32	1.45	4.32	9.32	18.21	29.03	41.25	55.05	73.09	82.64	90.22	99.14	100.00
	10				0.53	1.89	4.97	10.43	18.48	28.75	42.23	57.82	71.13	84.34	90.10	100.00
	0	63.40	86.74	95.25	98.31	99.41	99.80	99.93	99.98	99.99	100.00	100.00	100.00	100.00	100.00	100.00
	1	26.42	59.67	80.54	91.28	96.29	98.48	99.40	99.77	99.91	99.97	100.00	100.00	100.00	100.00	100.00
100	2	7.94	32.33	58.02	78.79	88.17	94.34	97.42	98.87	99.52	99.81	99.97	100.00	100.00	100.00	100.00
	3	1.84	14.10	35.28	57.05	74.22	85.70	92.56	96.33	98.27	99.22	99.86	99.96	100.00	100.00	100.00

ATTACHMENT B To the Preamble for discussion on §1356.71(b)

(continued)

(Catalog of Federal Domestic Assistance Program Numbers 93.658,
Foster Care Maintenance; 93.659, Adoption Assistance and 93.645,
Child Welfare Services - State Grants)

DATED:

4/30/98

Olivia A. Golden

Olivia A. Golden

Assistant Secretary

for Children and Families

APPROVED:

July 8 1998

Donna E. Shalala

Donna E. Shalala

Secretary

Rules

For the reasons set forth in the Preamble, 45 CFR Parts 1355 and 1356 are proposed to be amended 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. Section 1355.20 is amended by revising the definition of foster care and by adding the following definitions to read as follows:

§1355.20 Definitions.

(a) * * *

Child-care institution means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, and is licensed by the State in which it is situated or has been approved by the agency of such State responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing.

This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.'

* * *

Date the child enters foster care means the earlier of: the date of the first judicial finding that the child has been subjected to child abuse or neglect and placement and care responsibility is given to the State by the court; or, the date that is 60 calendar days after the date on which the child is physically removed from the home. When a child enters foster care on the basis of a voluntary placement agreement, the "date a child enters foster care" means the date on which the voluntary placement agreement is signed. This definition determines the date used in calculating all time period requirements related to the case review system in section 475 of the Social Security Act and for providing time-limited reunification services described at section 431(a)(7) of the Act.

* * *

Foster care means 24 hour substitute care for children placed away from their parents or guardians and for whom the

State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

Foster care maintenance payments are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, agency workers, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child-care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. "Daily supervision" for which foster care maintenance payments may be made includes:

- (1) foster family care - licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training; and
- (2) child-care institutions - routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

Foster family home means the home of an individual or family licensed or approved by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Provisional licensure or approval is insufficient for meeting title IV-E eligibility requirements. States may

not claim title IV-E reimbursement until final licensure or approval is granted.

Full hearing (often referred to by State courts as the evidentiary hearing, jurisdictional hearing, fact-finding hearing, merits or adjudication hearing) is the civil hearing in which the allegations, as set forth in the petition, of dependency, abuse or neglect concerning a child are addressed. The hearing enables the court to determine which allegations of the petition have been proven or admitted, if any, and whether court or agency intervention should continue. This is the hearing in which the State agency is assigned responsibility for placement and care of the child. The full hearing is never a shelter care hearing or emergency removal hearing (see definition of temporary custody proceeding).

Full review means the joint Federal and State review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part. A full review consists of two phases, the

State self-assessment and a subsequent on-site review, as described in §1355.33 of this part.

* * *

Legal guardianship means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term "legal guardian" means the caretaker in such a relationship.

National Child Abuse and Neglect Data System (NCANDS) means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and Treatment Act (Public Law 93-247), as amended.

Partial review means the joint Federal and State review of one or more Federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as

mutually agreed upon by the State and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part.

Permanency hearing means the hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether:

- 1) the child will be returned to the parent and, if applicable, when;
- 2) the child should be placed for adoption, with the State filing a petition for termination of parental rights;
- 3) the child should be referred for legal guardianship;
- 4) the child should be placed permanently with a fit and willing relative; or
- 5) the child should be placed in another planned permanent living arrangement, but only in cases where the State agency has documented to the State court a compelling

reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian.

The permanency hearing must be held no later than 12 months after the date the child enters foster care or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the State agency. Paper reviews, ex parte hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not considered permanency hearings.

* * *

State self-assessment means the initial phase of a full review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining, in part, the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part. The self-assessment refers to the completion of the Federally-prescribed self-assessment instrument by members of a review team that meet the requirements of §1355.33(a)(2) of this part.

Temporary custody proceeding (often referred to as the shelter care hearing, detention hearing, preliminary protective hearing, or emergency removal hearing) is the judicial proceeding held at the time of, or shortly after, the emergency removal of a child from the home. This proceeding gives the State agency temporary custody of a child until a full hearing is held.

* * * * *

3. New sections 1355.31 through 1355.38 are added to read as follows:

§1355.31 Elements of the child and family services review system.

Scope. Sections 1355.32 through 1355.38 of this part apply to reviews of child and family services programs administered by States and Indian Tribes under subparts 1 and 2 of title IV-B of the Act, and reviews of foster care and adoption assistance programs administered by States under title IV-E of the Act.

§1355.32 Timetable for the reviews.

(a) Initial reviews. Each State must complete an initial full review as described in §1355.33 of this part during the three-year period that begins six months after the final rule becomes effective.

(b) Reviews following the initial review.

(1) A State found to be operating in substantial conformity during an initial or subsequent review, as defined in §1355.34 of this part, must:

(i) Complete a full review every five years; and

(ii) Submit a completed State self-assessment to ACF three years after the on-site review.

The State self-assessment will be reviewed jointly by the State and the Administration for Children and Families to determine the State's continuing substantial conformity with the State plan requirements subject to review. No formal approval of this interim State self-assessment by ACF is required.

(2) State programs found not to be operating in substantial conformity during an initial or subsequent review will:

(i) Be required to develop and implement a program improvement plan, as defined in §1355.35 of this part; and

(ii) Complete a full review in the six month period that begins three years after the approval of the program improvement plan.

(c) Reinstatement of reviews based on information that a State is not in substantial conformity.

- (1) ACF may require a full or a partial review at any time, based on information that indicates the State may no longer be operating in substantial conformity.
- (2) Prior to conducting a full or partial review, ACF will conduct an inquiry and require the State to submit additional data whenever the following information indicates that the State may not be in substantial conformity:
 - (i) Information included in the State self-assessment (completed between full reviews) or Annual Progress and Services Reports on the CFSP;
 - (ii) Information from reports from data bases, including the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS);
 - (iii) Information from reviews, audits or assessments conducted by ACF, the Office of Inspector General, or other public or private organizations;

- (iv) The disposition of class action lawsuits brought against a State, whether such disposition is through the process of litigation or through settlement of the lawsuit through a consent decree; or
 - (v) Other information brought to the attention of the Secretary.
- (3) If the additional information and inquiry indicate to the satisfaction of ACF that the State is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by this inquiry at this time.
- (4) ACF may proceed with a full or partial review if the State does not provide the additional information as requested, or the additional information confirms that the State may not be operating in substantial conformity.

§1355.33 Procedures for the review.

- (a) The full child and family services reviews will:

- (1) Consist of a two-phase process that includes a State self-assessment and an on-site review; and
- (2) Be conducted by a team of Federal and State reviewers that includes:
 - (i) Staff of the State child and family services agency, including the State and local offices who represent the service areas that are the focus of any particular review as jointly agreed upon by the State and ACF on the basis of information in the State self-assessment; 
 - (ii) Representatives selected by the State, in collaboration with the ACF Regional Office, from those with whom State was required to consult in developing its CFSP, as described and required in 45 CFR part 1357.15(1);
 - (iii) Federal staff of HHS; and
 - (iv) Other individuals, as deemed appropriate and agreed upon by the State and ACF.
- (b) State self-assessment. The first phase of the full review will be a State self-assessment conducted by the

internal and external State members of the review team,
in consultation with ACF, that assesses:

- (1) The outcome areas of safety, permanency and well-being of children and families served by the State agency;
 - (2) The characteristics of the State agency that impact most significantly on the agency's capacity to deliver services to children and families that will lead to improved outcomes; and
 - (3) The strengths and areas of the State's child and family services programs that require further examination through an on-site review.
- (c) On-site review. The second phase of the full review will be an on-site review.
- (1) The on-site review will cover specific areas of the State's child and family services continuum. It will be jointly planned by the State and ACF, and guided by information in the completed State self-assessment that identifies areas thought to be in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions of the State, as agreed upon by the ACF Regional Office and the State, provided the State's largest metropolitan subdivision is one of the locations selected for the on-site review.

(3) Sources of information collected during the on-site review to determine substantial conformity must include, but are not limited to:

(i) Case records on children and families served by the agency;

(ii) Interviews with children and families whose case records have been reviewed and who are, or have been, recipients of services of the agency;

(iii) Social workers, foster parents, and service providers for the cases selected for the on-site review; and

(iv) Interviews with other individuals, such as those representing the sources of consultation for the development of the

*Parents,
social workers
etc -
Outreach*

State's CFSP, as required by
45 CFR 1357.15(1).

(4) The composition of the sample of cases selected for the on-site review, by number of cases and type of cases, will be jointly determined by the ACF Regional Office and the State, based on the findings of the State self-assessment, subject to the following criteria:

(i) Cases comprising the sample, including any sub-samples, of the sample must be randomly selected;

(ii) The number of cases reviewed must be sufficient to evaluate the qualitative issues agreed upon by the ACF Regional Office and the State as the focus of the on-site review based on analysis of the State self-assessment and any other relevant data available to the State;

(iii) The sampling plan used to select cases for the on-site review must be approved by the ACF designated official.

- (d) Partial review. A partial review, when required, will be planned and conducted jointly by ACF and the State agency based on the nature of the concern.
- (e) Within 30 calendar days following either a partial or full review, ACF will notify the State agency in writing of whether the State is, or is not, operating in substantial conformity.

 §1355.34 Criteria for determining substantial conformity.

- (a) Criteria to be satisfied. A State's substantial conformity with title IV-B and title IV-E State plan requirements will be based on the following:

- (1) its ability to meet criteria related to outcomes for children and families;
- (2) its ability to meet criteria related to the State agency's capacity to deliver services leading to improved outcomes;
- (3) aggregate data in the State self-assessment used to examine each outcome and performance indicator which corroborates the findings of the on-site component of the review, and;

- (4) the determination of conformity by the ACF
Regional Office based on the criteria described in
paragraphs (a) - (c) of this section.

(b) Criteria related to outcomes.

- (1) A State's substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) In the area of child safety:

- (A) Children are protected from abuse and neglect and safely maintained in their homes (whenever possible); and
- (B) The risk of harm to children is minimized;

(ii) In the area of permanency for children:

- (A) Children have permanency and stability in their living situations; and
- (B) The continuity of family relationships and connections is preserved for children; and

(iii) In the area of child and family well-being:

- (A) Families have enhanced capacity to provide for their children's needs;
- (B) Children have educational achievements appropriate to their abilities; and
- (C) Children receive adequate services to meet their physical and mental health needs.

(2) A State's level of achievement with regard to each outcome reflects the extent to which a State has implemented the following CFSP requirements or assurances:

- (i) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;
- (ii) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

- (iii) The requirements in section 422(b)(9) of the Act regarding recruitment of potential foster and adoptive families;
- (iv) The assurances by the State as required by section 422(b)(10)(C)(i) and (ii) of the Act regarding policies and procedures for abandoned children;
- (v) The requirements in section 422(b)(11) of the Act regarding the State's compliance with the Indian Child Welfare Act;
- (vi) The requirements in section 422(b)(12) of the Act regarding a State's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,
- (vii) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency

plan and complete the steps necessary to
finalize the permanent placement.

Is NEPA
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practically?

- ← (3) A State will be determined to be in substantial conformity if each outcome listed in paragraph (b) (1) of this section is rated as "substantially achieved" in 95 percent of the cases examined during the on-site review (90 percent of the cases for a State's initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome has been achieved for each case reviewed.

- (c) Criteria related to State agency capacity to deliver services leading to improved outcomes for children and families.

In addition to the criteria related to outcomes contained in paragraph (b) of this section, the State agency must also satisfy criteria related to the delivery of services. Information from the self-assessment and the on-site review must indicate that the State has implemented the referenced State plan requirements related to the State agency's capacity to deliver services leading to improved outcomes, and

actually delivered those services, by meeting each of
the criteria listed for the following core systemic
factors:

 (1) Statewide information system: The State is
operating a statewide information system that, at
a minimum, can readily identify the status,
demographic characteristics, location, and goals
for the placement of every child who is (or within
the immediately preceding 12 months, has been) in
foster care (section 422(b)(10)(B)(i) of the Act);

(2) Case review system: The State has procedures in
place that:

(i) provide, for each child, a written case plan
to be developed jointly with the child's
parent(s) that includes provisions: for
placing the child in the least restrictive,
most family-like placement appropriate to
his/her needs, and in close proximity to the
parents' home where such placement is in the
child's best interests; for visits with a
child placed out of State at least every 12
months by a social worker of the agency or of
the agency in the State where the child is

placed; and for documentation of the steps
taken to make and finalize an adoptive or
other permanent placement when the child
cannot return home (section 422(b)(10)(B)(ii)
of the Act);

(ii) provide for periodic review of the status of
each child no less frequently than once every
six months by either a court or by
administrative review (section
422(b)(10)(B)(ii) of the Act);

(iii) assure that each child in foster care under
the supervision of the State has a permanency
hearing in a family or juvenile court or
another court of competent jurisdiction
(including a Tribal court), or by an
administrative body appointed or approved by
the court, which is not a part of or under
the supervision or direction of the State
agency, no later than 12 months from the date
the child entered foster care (and not less
frequently than every 12 months thereafter
during the continuation of foster care)
(section 422(b)(10)(B)(ii) of the Act);

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/s/ J. J. ASKA

- (iv) provide a process for termination of parental rights proceedings in accordance with section 475(5)(E) of the Act; and,
 - (v) provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and an opportunity to be heard in any review or hearing held with respect to the child.
- (3) Quality assurance system: The State has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:
- (i) is in place in the jurisdictions within the State where services included in the CFSP are provided;
 - (ii) is able to evaluate the adequacy and quality of services provided under the CFSP;

- (iii) is able to identify the strengths and needs of the service delivery system it evaluates;
 - (iv) provides reports to agency administrators on the quality of services evaluated and needs for improvement; and
 - (v) evaluates measures implemented to address identified problems.
- (4) Staff training: The State is operating a staff development and training program (45 CFR 1357.15(t)) that:
- (i) supports the goals and objectives in the State's CFSP;
 - (ii) addresses services provided under both subparts of title IV-B and the training plan under title IV-E of the Act;
 - (iii) provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed

and that includes the basic skills and knowledge required for their positions;

- (iv) provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the State's CFSP; and,
- (v) provides short-term training for current or prospective foster parents, adoptive parents, and the staff of State-licensed or State-approved child-care institutions providing care to foster and adopted children receiving assistance under title IV-E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

- (5) Service array: Information from the State self-assessment and on-site review determines that the State has in place an array of services (45 CFR 1357.15(n) and section 422(b)(10)(B)(iii) and (iv) of the Act) that include, at a minimum:

- (i) services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;
- (ii) services that address the needs of the family, as well as the individual child, in order to create a safe home environment;
- (iii) services designed to enable children at risk of foster care placement to remain with their families when their safety and well being can be reasonably assured;
- (iv) services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;
- (v) services that are accessible to families and children in all political jurisdictions covered in the State's CFSP; and,

(vi) services that can be individualized to meet the unique needs of children and families served by the agency.

(6) Agency responsiveness to the community:

(i) the State, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State and county agencies responsible for implementing the CFSP and other major stakeholders in the services delivery system including, at a minimum, tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(1)(4));

(ii) the agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.15(1)(4));

(iii) there is evidence that the agency's goals and objectives included in the CFSP reflect

consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) there is evidence that the State's services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) Foster and adoptive parent licensing, recruitment and retention:

(i) the State has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) the standards so established are applied by the State to every licensed or approved foster family home or child care institution

receiving funds under title IV-E or IV-B of the Act (section 471(a)(10) of the Act);

(iii) the State complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16) and 475(1) of the Act and 45 CFR 1356.30;

(iv) the State has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed (section 422(b)(9) of the Act); and,

(v) the State has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(12) of the Act).

(d) Availability of review instruments.

ACF will make available to the States copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments take place.

§1355.35 Program improvement plans.

(a) Mandatory program improvement plan.

States found not to be operating in substantial conformity shall develop a program improvement plan. The program improvement plan must:

- (1) Be developed jointly by State and Federal staff in consultation with the review team;
- (2) Identify the areas in which the State's program is not in substantial conformity;
- (3) Set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas;

- (4) Establish benchmarks that will be used to measure the State's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;
- (5) Identify the technical assistance needs and sources of technical assistance, both Federal and non-Federal, which will be used to make the necessary improvements identified in the program improvement plan.

(b) Voluntary program improvement plan.

States found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

- (1) The State and Regional Office agree that there are areas of the State's child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

(2) ACF approval of the voluntary program improvement plan will not be required; and

(3) No penalty will be assessed for the State's failure to achieve the goals described in the voluntary program improvement plan.

(c) Approval of program improvement plans.

(1) A State determined not to be in substantial conformity must submit the program improvement plan to ACF for approval within 60 calendar days from the date the State receives the written notification from ACF that it is not operating in substantial conformity.

(2) Any program improvement plan will be approved by ACF if it meets the provisions of paragraph (a) of this section.

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the State will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the State does not submit a revised program improvement plan according to the provisions of paragraph (c) (3) of this section, or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of §1355.36 this part will apply.

(d) Duration of program improvement plans. States will have a maximum period of three years within which to successfully complete the implementation of the provisions in the program improvement plan.

(e) Evaluating program improvement plans. Program improvement plans will be evaluated jointly by the State agency and ACF, in collaboration with other members of the review team, as described in the State's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the State is operating in subsequent substantial conformity;

(2) The frequency of evaluating progress will be

determined jointly by the State and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the State's CFSP, as described in paragraph (f).

- (3) Action steps may be jointly determined by the State and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and
- (4) The State and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:
 - (i) The renegotiated plan is designed to correct the areas of the State's program determined not to be in substantial conformity;
 - (ii) The amount of time needed to implement the provisions of the plan does not extend beyond three years from the date the original program improvement plan was approved; and
 - (iii) The renegotiated plan is approved by ACF.

(f) Integration of program improvement plans with CFSP planning. The elements of the program improvement plan must be incorporated into the goals and objectives of the State's CFSP. Progress in implementing the program improvement plan must be included in the annual reviews and progress reports related to the CFSP required in 45 CFR 1357.16.

§1355.36 Withholding Federal funds due to failure to conform following the completion of a State's program improvement plan.

(a) For the purposes of this section:

(1) The term "title IV-B funds" refers to the State's combined allocation of title IV-B subpart 1 and subpart 2 funds; and

(2) The term "title IV-E funds" refers to the State's reimbursement for administrative costs for foster care under title IV-E.

(b) Determination of the amount of Federal funds to be withheld. ACF will determine the amount of the State title IV-B and IV-E funds to be withheld due to a finding that the State is not operating in substantial conformity, as follows:

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- (1) Title IV-B funds and a portion of title IV-E funds will be withheld for States determined not to be operating in substantial conformity only after the State has had an opportunity to correct the areas of nonconformity through the development and implementation of a program improvement plan.

- (2) Title IV-B and IV-E funds will not be withheld from a State if the determination of nonconformity was caused by the State's correct use of formal written statements of Federal law or policy provided the State by DHHS.
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- (3) A portion of the State title IV-B and IV-E funds will be withheld by ACF for the year under review and for each succeeding year until the State's failure to comply is ended either through the successful completion of a program improvement plan or until a subsequent full review determines the State is operating in substantial conformity.

- (4) The amount of title IV-B and title IV-E funds to be withheld by ACF will be computed as follows:

(i) The pool of title IV-B and title IV-E funds from which funds will be withheld due to a determination that a State is not operating in substantial conformity includes:

(A) The State's allocation of title IV-B funds for each of the years to which withholding applies, and

(B) An amount equivalent to 10 percent of the State's Federal claims for title IV-E foster care administrative costs for each of the years to which withholding applies.

(ii) An amount equivalent to one percent of the funds described in paragraph (b) (4) (i) of this section for each of the years to which withholding applies will be withheld for each of the seven outcomes listed in §1355.34(b) (2) of this part that is determined not to be substantially achieved, and

(iii) An amount equivalent to one percent of the funds described in paragraph (b) (4) (i) of this

section for each of the years to which withholding applies will be withheld for each of the seven systemic factors listed in §1355.34(c)(2) of this part that is determined not to be in substantial conformity.

- (5) The maximum amount of title IV-B and title IV-E funds to be withheld due to the State's failure to comply is fourteen percent per year of the funds described in paragraph (b)(4)(i) of this section for each year to which the withholding of funds applies.

(c) Suspension of withholding.

- (1) For States determined not to be operating in substantial conformity, ACF will suspend the withholding of the State title IV-B and title IV-E funds during the time that a program improvement plan is in effect, provided that:

- (i) The program improvement plan conforms to the provisions of §1355.35 of this part; and
- (ii) The State is actively implementing the provisions of the program improvement plan.

(2) Suspension of the withholding of funds is limited to three years following each review, or the amount of time approved for implementation of the program improvement plan, whichever is less.

(d) Terminating the withholding of funds. For States determined not to be in substantial conformity, ACF will terminate the withholding of the State's title IV-B and title IV-E funds related to the nonconformity under the following circumstances:

(1) When the State's failure to conform is ended by the successful completion of a program improvement plan;

(2) Upon determination by the State and ACF that action steps have been completed and goals achieved as specified in the program improvement plan, ACF will rescind the withholding of the portion of title IV-B and title IV-E funds related to those goals as of the date at the end of the quarter in which they were determined to be achieved.

(e) Withholding of funds.

- (1) States determined not to be in substantial conformity which fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the latest completion date specified in the plan, and advised of the amount of title IV-B and title IV-E funds which are to be withheld.
- (2) Title IV-B and title IV-E funds will be withheld based on the following:
 - (i) Funds related to goals and action steps which have not been achieved at the conclusion of a program improvement plan will be withheld by ACF at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made to the latest completion date specified in the program improvement plan; and
 - (ii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue

until a subsequent full review determines the State to be in substantial conformity.

- (3) When the point in time at which the State is determined to be in substantial conformity falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.
- (4) A State agency that refuses to participate in the development or implementation of a program improvement plan, as required by ACF, will be subject to the maximum withholding of fourteen percent of its title IV-B and title IV-E funds, as described in paragraph (b) (5) of this section, for each year or portion thereof to which the withholding of funds applies. .
- (5) Interest on withheld funds. The State agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.13.

§1355.37 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.

(a) Determination that a violation has occurred in the absence of a court finding.

(1) If ACF becomes aware of a possible section 471(a)(18) violation, whether in the course of a child and family services review, the filing of a complaint, or through some other mechanism, it will refer such a case to the Department's Office for Civil Rights (OCR) for investigation.

 (2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a State or an entity in the State:

(i) has denied 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 of the child, involved;

(ii) has delayed or denied the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved; or,

(iii) with respect to a State, maintains any statute, regulation, policy, procedure, or practice that, if applied, would likely result in a violation against a person as defined in paragraphs (2)(i) and (2)(ii) of this subsection.

(3) ACF will provide the State or entity involved with written notification of its determination.

(4) If there has been no violation, there will be no further action. If ACF determines that there has been a violation of section 471(a)(18), it will take enforcement action as described in this regulation.

(5) Compliance with the Indian Child Welfare Act of 1978 does not constitute a violation of section 471(a)(18).

(b) Corrective action and penalties for violations with respect to a person or based on a court finding.

(1) A State found to be in violation of section 471(a)(18) with respect to a person, as described

in paragraphs (a)(2)(i) and (a)(2)(ii), will be penalized in accordance with paragraph (g)(2) of this section. A State determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4). The State may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

- (2) Corrective action plans are subject to ACF approval.

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- (3) If the corrective action plan does not meet the provisions of subsection (d), the State must revise and resubmit the plan for approval until it has an approved plan.

- (c) Corrective action for violations resulting from a State's statute, regulation, policy, procedure, or practice.

- (1) A State found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop, obtain approval of, and

implement a corrective action plan within six months of receiving notification from ACF that it is in violation of section 471(a)(18) of the Act. If the State fails to implement the corrective action plan within six months, a penalty will be imposed in accordance with paragraph (g)(3).

- (2) Corrective action plans are subject to ACF approval.
- (3) If the corrective action plan does not meet the provisions of subsection (d), the State must revise and re-submit the plan until it has an approved plan.
- (4) ACF will consider a State to have implemented its corrective action plan when it begins to carry out the action step(s) in the plan.
- (5) Once implemented, a State must complete the corrective action plan according to the timeframe in the plan. If the State fails to complete the corrective action plan within the specified time, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

(d) Contents of a corrective action plan. A corrective action plan must:

- (1) identify the issues to be addressed;
- (2) set forth the steps for taking corrective action;
- (3) identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,
- (4) specify dates for completing each action step. Extension of these dates may be negotiated with ACF.

(e) Evaluation of corrective action plans. ACF may evaluate action steps in a corrective action plan that address a violation of section 471(a)(18) as they are completed. ACF will evaluate corrective action plans and notify the State (in writing) of its success or failure to complete the plan within 30 calendar days of the latest projected completion date specified in the plan. If the State has failed to complete the corrective action plan, ACF will calculate the amount

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of reduction in the State's title IV-E payment and include this information in the notification of failure to complete the plan.

(f) For the purposes of this section:

The term "title IV-E funds" refers to the Federal share of expenditures a State claims for foster care maintenance payments, adoption assistance payments, administrative, and training costs under title IV-E and the State's allotment for the Independent Living program.

(g) Reduction of title IV-E funds.

(1) Title IV-E funds may be reduced in specified amounts in accordance with subsection(h) under the following circumstances:

- (i) a determination that a State is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or;

- (ii) after a State's failure to implement or complete a corrective action plan described in subsection (c).
- (2) Once ACF notifies a State that it has committed a section 471(a)(18) violation with respect to a person, the State's title IV-E funds will be reduced for the fiscal quarter in which the State received such notification and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan, whichever is sooner.
- (3) For States that fail to implement or complete a corrective action plan as described in subsection (c), title IV-E funds will be reduced by ACF for the fiscal quarter in which the State received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the State completes the corrective action plan, whichever is sooner.
- (4) If, as a result of a court finding, a State is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the State is

notified of the violation, its title IV-E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan, whichever is sooner.

- (5) The maximum number of quarters that a State will have its title IV-E funds reduced due to the State's failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

- (h) Determination of the amount of reduction of Federal funds. ACF will determine the reduction in title IV-E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) of the Act.

- (1) State agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in subsection (c) will be subject to a penalty. The