

the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.13.

[65 FR 4082, Jan. 25, 2000, as amended at 66 FR 58676, Nov. 23, 2001]

**§ 1355.39 Administrative and judicial review.**

States determined not to be in substantial conformity with titles IV-B and IV-E State plan requirements, or a State or entity in violation of section 471(a)(18) of the Act:

(a) May appeal, pursuant to 45 CFR part 16, the final determination and any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in § 1355.36(e)(1) of this part, or receipt of a notice of noncompliance by ACF as described in § 1355.38(a)(3) of this part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the State or entity receives notice of the decision by the Board. Appeals of adverse Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a State or entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

[65 FR 4083, Jan. 25, 2000]

**§ 1355.40 Foster care and adoption data collection.**

(a) *Scope of the data collection system.*

(1) Each State which administers or supervises the administration of titles IV-B and IV-E must implement a system that begins to collect data on October 1, 1994. The first transmission must be received in ACF no later than May 15, 1995. The data reporting system must meet the requirements of § 1355.40(b) and electronically report certain data regarding children in foster care and adoption. The foster care

data elements are listed and defined in Appendix A to this part and the adoption data elements are listed and defined in Appendix B to this part.

(2) For the purposes of foster care reporting, each State's data transmission must include all children in foster care for whom the State title IV-B/IV-E agency has responsibility for placement, care, or supervision. This includes American Indian children covered under the assurances in section 422(b)(10) of the Act on the same basis as any other child. For children in care less than 30 days, only a core set of information will be required, as noted in appendix A to this part. For children who enter foster care prior to October 1, 1995 and who are still in the system, core data elements will be required; in addition, States will also be required to report on the most recent case plan goal affecting those children. For children in out-of-State placement, the State placing the child and making the foster care payment submits and continually updates the data.

(3) For the purposes of adoption reporting, data are required to be transmitted by the State on all adopted children who were placed by the State title IV-B/IV-E agency, and on all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. Full adoption data as specified in appendix B to this part are required only for children adopted after the implementation date of October 1, 1994. For children adopted prior to October 1, 1994, who are continuing to receive title IV-E subsidies, aggregate data are to be reported. For a child adopted out-of-State, the State which placed the child submits the data.

(b) *Foster care and adoption reporting requirements.* (1) The State agency shall transmit semi-annually, within 45 days of the end of the reporting period (i.e., by May 15 and November 14), information on each child in foster care and each child adopted during the reporting period. The information to be reported consists of the data elements found in appendices A and B to this part. The data must be extracted from the data

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system as of the last day of the reporting period and must be submitted in electronic form as described in appendix C to this part and in record layouts as delineated in appendix D to this part.

(2) For foster care information, the child-specific data to be transmitted must reflect the data in the information system when the data are extracted. Dates of removal from the home and discharge from foster care must be entered in accordance with paragraph (d)(1) of this section. The date of the most recent periodic review (either administrative or court) must be entered for children who have been in foster care for more than nine months. Entry of this date constitutes State certification that the data on the child have been reviewed and are current.

(3) Adoption data are to be reported during the reporting period in which the adoption is legalized or, at the State's option, in the following reporting period if the adoption is legalized within the last 60 days of the reporting period. For a semi-annual period in which no adoptions have been legalized, States must report such an occurrence.

(4) A summary file of the semi-annual data transmission must be submitted and will be used to verify the completeness of the State's detailed submission for the reporting period.

(5) A variety of internal data consistency checks will be used to judge the internal consistency of the semi-annual detailed data submission. These are specified in Appendix E to this part.

(c) *Missing data standards.* (1) The term "missing data" refers to instances where no data have been entered, if applicable, for a particular data element. In addition, all data elements which fail a consistency check for a particular case will be converted to missing data. All data which are "out of range" (i.e., the response is beyond the parameters allowed for that particular data element) will also be converted to missing data. Details of the circumstances under which data will be converted to missing data are specified in appendix E to this part. Data elements with responses of "can-

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not be determined" or "not yet determined" are not considered as having missing data.

(2) For missing data in excess of 10 percent for any one data element, the penalty will be applied.

(3) The penalties for missing data are specified in paragraph (e) of this section.

(d) *Timeliness of foster care data reports.* (1) For each child, a computer generated transaction date must reflect the actual date of data entry and must accompany the date of latest removal from the home and the date of exit from foster care. Ninety percent of the subject transactions must have been entered into the system within 60 days of the event (removal from home or discharge from foster care).

(2) Penalties shall be invoked as provided in paragraph (e) of this section.

(e) *Penalties.* (1) Failure by a State to meet any of the standards described in paragraphs (a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV-E State plan. Penalties for substantial noncompliance will be assessed semi-annually against a State's title IV-E administrative cost reimbursement in an amount that is equal to no more than 10 percent of the State's annual share of title IV-B funds above the base appropriation of \$141 million. The amount of incentive funds, section 427 of the Act, against which a penalty can be assessed will remain the same as the amount promulgated as being available to the States as of June 30, 1993, the date of issuance of the amount of section 427 funds for fiscal year 1993 (see Appendix F to this part). The penalties will be calculated and applied regardless of any determination of compliance with the requirements of section 427, and regardless of whether any State has withdrawn its certification with respect to section 427. Years One through three (October 1, 1994 through September 30, 1997) will be three penalty-free years of operation. Year Four (October 1, 1997 through September 30, 1998) will be at half penalty and Year Five (October 1, 1998 through September 30, 1999) and thereafter will be at full penalty. The maximum annual penalty is 20 percent.

(2) Penalties will be assessed semi-annually against a State's title IV-E administrative cost reimbursement for the period in which the noncompliance occurred and any subsequent period of noncompliance. Following a decision sustaining ACYF's proposed action, funds will be recovered until the State demonstrates, by submitting an acceptable report, that it will no longer fail to comply.

(3) Half of the maximum allowable assessed penalty for a given reporting period is applicable to foster care reporting and half to adoption reporting.

(4) The penalty for foster care reporting will be applied for any semi-annual period when a State fails to meet one or more of the following criteria:

(i) Fails to submit the report within 45 days of the end of the reporting period as specified in paragraphs (b)(1) and (b)(2) of this section; or

(ii) There is one or more element which exceeds the level of tolerance for missing data as specified in paragraphs (c)(1) and (c)(2) of this section; or

(iii) Fails to meet the timeliness standards as specified in paragraph (d)(1) of this section.

(5) The penalty for adoption reporting will be applied for any semi-annual period when a State fails to meet one or more of the following criteria:

(i) Fails to submit the report within 45 days of the end of the reporting period as specified in paragraphs (b)(1) and (b)(3) of this section; or

(ii) There is one or more element which exceeds the level of tolerance for missing data as specified in paragraphs (c)(1) and (c)(2) of this section.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0267. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[58 FR 67924, Dec. 22, 1993, as amended at 60 FR 40507, Aug. 9, 1995; 65 FR 4084, Jan. 25, 2000; 66 FR 58676, Nov. 23, 2001]

#### § 1355.50 Purpose of this part.

This part sets forth the requirements and procedures States must meet in order to receive Federal financial participation for the planning, design, de-

velopment, installation and operation of statewide automated child welfare information systems authorized under section 474(a)(3)(c) of the Act.

[58 FR 67945, Dec. 22, 1993]

#### § 1355.52 Funding authority for statewide automated child welfare information systems (SACWIS).

(a) States may receive Federal reimbursement at the 75 percent match rate for FY 1994, FY 1995 and FY 1996, and at the 50 percent level thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system, to the extent such system:

(1) Provides for the State to collect and electronically report certain data required by section 479(b) of the Act and § 1355.40 of this part;

(2) To the extent practicable, provides for an interface with the State data collection system for child abuse and neglect;

(3) To the extent practicable, provides for an interface with and retrieval of information from the State automated information system that collects information relating to the eligibility of individuals under title IV-A of the Act; and

(4) Provides for more efficient, economical and effective administration of the programs carried out under a State plan approved under title IV-B and title IV-E.

(b) States may also be reimbursed for the full amount of expenditures for the hardware components for such systems at the rates provided under paragraph (a) of this section.

(c) Expenditures for the operation of the automated information system described in paragraph (a) of this section are eligible for FFP at the 50 percent matching rate.

[58 FR 67945, Dec. 22, 1993]

#### § 1355.53 Conditions for approval of funding.

(a) As a condition of funding, the SACWIS must be designed, developed (or an existing system enhanced), and installed in accordance with an approved advance planning document