

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth and Families

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INFORMATION MEMORANDUM

TO: State Agencies Administering or Supervising the Administration of
Titles IV-B and IV-E of the Social Security Act

SUBJECT: Decision regarding AFCARS Penalties, AFCARS File Name

PURPOSE:

This Information Memorandum informs States of the decision made by Dr. Wade Horn, Assistant Secretary, Administration for Children and Families, regarding the States' appeal of the Adoption and Foster Care Analysis and Reporting System (AFCARS) penalties, and, as a result of that decision, required changes to the State's AFCARS file name.

LEGAL and RELATED REFERENCES: Section 479 of the Social Security Act; 45 CFR Part 1355.40, ACYF-CB-PI-01-07, Technical Bulletin Number 2.

This Information Memorandum (IM) rescinds ACYF-CB-PI-97-02, issued 5/8/1997; ACYF-CB-PI-98-11, issued 7/6/1998; and ACYF-CB-PI-99-01, issued 1/27/1999.¹

INFORMATION:

Twelve States jointly filed an appeal of the AFCARS penalties that the Administration for Children and Families (ACF) imposed as a result of their substantial failure to comply with the requirements in 45 CFR 1355.40. A presiding officer was appointed to hear the appeal and recommend a decision to the Assistant Secretary. On January 27, 2002, after reviewing the presiding officer's recommended findings and proposed decision, Assistant Secretary Horn decided to withdraw the penalties at issue in the appeal. Attached to this IM is a copy of Dr. Horn's decision. As a result of this decision, and until further notice, ACF will not assess penalties for States determined not to be in substantial compliance with the AFCARS standards in 45 CFR 1355.40. However, States must meet all AFCARS requirements, in accordance with

¹ These issuances are being withdrawn because they contain references to AFCARS penalties. Instructions regarding race and ethnicity changes required by OMB that were contained in PI-99-01 are included in the regulation at 45 CFR 1355.40 and appendices.

Federal regulations at 45 CFR 1355.40 and appendices to 45 CFR Part 1355, including the submission of data semi-annually to ACF by May 15 and November 14. ACF will continue to monitor States' progress in improving the quality of the AFCARS data, and notify them accordingly when they are determined to not meet the AFCARS standards.

The AFCARS data are an integral component of many of ACF's activities and programs. The need for reliable and consistent data has always been a critical concern, especially for planning services and developing policy. ACF uses these data for a number of purposes, including:

- Responding to Congress, the General Accounting Office (GAO), the Office of Management and Budget (OMB), the DHHS Office of Inspector General (OIG), national advocacy organizations, States, and other interested organizations requests for current data on children in foster care or those who have been adopted (e.g. Child Welfare Outcomes Report);
- Trend analyses and short and long-term planning;
- Short and long-term budget projections (e.g. Allotment of funds in the Chafee Foster Care Independence Program [CFCIP]);
- Adoption Incentives Program;
- Child and Family Services (CFS) and Title IV- E Eligibility Reviews.

States' continued efforts in improving the quality of AFCARS data submitted to ACF will help ensure the effective use of the data.

State File Name

As a result of the Assistant Secretary's decision, the file type "corrected data" no longer is applicable. Effective immediately, States should not use a "C" in the AFCARS file name. The "R" (regular) and "S" (subsequent) file names remain in effect when States submit their AFCARS files. Files that are submitted for the current report period will continue to be named with an "R," and all other files submitted will be named with an "S." For information on the definitions of "R" and "S" see ACYF-CB-PI-01-07, issued May 4, 2001 and ACF Technical Bulletin #2. Technical Bulletin #2 has been revised to reflect this change and is attached to this IM.

INQUIRIES TO: ACF Regional Offices

/s/

Joan E. Ohl
Commissioner
Administration on Children, Youth
and Families

Attachments:

Attachment A: [Final Decision on AFCARS Penalties](#)

Attachment B: [Technical Bulletin #2](#)

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION FOR CHILDREN AND FAMILIES

In the Matter of AFCARS Penalties)
Imposed on California, Florida,)
Kansas, Maryland, Minnesota,) DOCKET NOS. A-2000-59
New York, North Carolina, Ohio,) A-2000-61
South Dakota, Texas, Virginia,)
And Wisconsin)
_____)

FINAL DECISION OF THE ASSISTANT SECRETARY

This is a consolidated proceeding currently involving 12 states that appealed penalties originally imposed by the Administration for Children and Families (ACF). The penalties were imposed following findings that the states had failed to comply with the requirements of the Adoption and Foster Care Analysis and Reporting System (AFCARS). There were numerous objections to the AFCARS requirements, their application, and the authority of ACF to impose penalties.

By agreement, these appeals were conducted under the procedures at 45 C.F.R. Part 213. A presiding officer was appointed to conduct the hearing and develop the record. This process resulted in recommended findings and a proposed decision. The parties did not dispute any material facts, but rather argued the meaning of the agreed on facts, and the law and policy as applied to these facts.

The presiding officer recommended withdrawal of the penalties. The primary basis for the recommendation was a statutory change to the AFCARS penalty provision, with a directive that regulations be promulgated that would include a corrective action process.

Having reviewed the Recommended Findings and Proposed Decision of the presiding officer, it is my decision to withdraw the penalties. However, this decision should not be viewed as indicating agreement with all of the recommended findings, whether factual or legal.

For example, one conclusion with which I disagree concerns the conclusions about the effect of the Paperwork Reduction Act (PRA). The relevant statutory provision at 44 U.S.C 3512 is clear in providing that failure to display a valid Office of Management and Budget (OMB) number indicating OMB's approval of the data collection requirement, or to provide a statement that lack of a valid number means that no response is required to the data collection requirement, bars imposing a penalty. While this aspect of the proposed decision is correct, it

fails to address additional provisions concerning the PRA. The states' argument, and the proposed decision, adopt the position that the failure to post a valid OMB number or advise states that they did not have to comply with the data collection requirement precludes enforcing compliance with AFCARS requirements with no exception. This is not the case. 5 C.F.R 1320.6(c) provides:

Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit, or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or inform the potential persons who are to respond to the collection of information, as prescribed in sec. 1320.5(b), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner. [Emphasis supplied.]

Thus, I conclude that the PRA violation does not preclude enforcement of the AFCARS requirements if states are provided the opportunity to satisfy their requirements in any other reasonable manner. This analysis would apply not only to the AFCARS requirements, but to any other situation where there has been or might be a failure to comply with 5 C.F.R 1320(a)(2) or 1320(5)(b)(2)(i). Having noted this, it is necessary to say that my decision to reverse the penalties is in no way predicated on lack of compliance with the PRA.

The other grounds that I rely on cannot be remedied by a remand or further corrective action by ACF at this time.

This constitutes my final decision in these cases.

DATED:

Washington, D.C.

Wade F. Horn 01/27/02

Wade F. Horn, Ph.D.
Assistant Secretary
Administration for Children and Families