

Adoption and Foster Care Analysis and Reporting System (AFCARS) Supplemental Notice of Proposed Rulemaking (SNPRM): An Overview



Presented By:
**The Administration
for Children and Families**



AFCARS SNPRM: Introduction

- On April 7, 2016 ACF published a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing to require that state title IV-E agencies collect and report additional data elements related to the Indian Child Welfare Act of 1978 (ICWA) in the Adoption and Foster Care Analysis and Reporting System (AFCARS), to enhance the type and quality of information title IV–E agencies report to ACF.
- The SNPRM is available for review and comment at <https://www.federalregister.gov/articles/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system>
- The comment period for the SNPRM is from April 7, 2016 – May 9, 2016.



AFCARS SNPRM

During this call we will review:

- AFCARS Background Information
- SNPRM Purpose and Background
- Overview of Proposal
 - Data elements that identify the children to whom ICWA applies.
 - Data elements that collect meaningful information about the experience of children for whom ICWA applies (removal, notification, active efforts, placements, TPR, transfers to tribal court).
- Final Rule and Implementation
- Next Steps and Resources

AFCARS SNPRM



AFCARS: Background



AFCARS: BACKGROUND

Current AFCARS

- AFCARS collects case level information on all children in foster care and children adopted with the involvement of the state/tribal title IV-E agency. AFCARS also includes information on foster and adoptive parents.
- Title IV-E agencies report data to AFCARS two times per year, in May and November.
- The data reflects the child's experience as of the end of the report period.
- Includes: demographics, when and why the child entered foster care, characteristics on foster care and adoptive placements, the reason the child exits foster care, and whether the adopted child has special needs.



AFCARS: BACKGROUND

Statutory Requirements

- HHS is statutorily required to have a regulated national data collection system that provides comprehensive demographic and case-specific information on all children who are in foster care and adopted with title IV-E agency involvement. (Section 479 of the Social Security Act)



AFCARS SNPRM

SNPRM Purpose and Background



AFCARS SNPRM: Background

What did ACF propose in the AFCARS NPRM published in February 2015 and how is the SNPRM different?

- On February 9, 2015, ACF published a NPRM to: 1) incorporate statutory requirements that have passed since 1993; 2) implement the statutory authority to assess penalties for noncompliant data submissions; and 3) enhance the type and quality of information title IV-E agencies report to the Children's Bureau (CB).
- The SNPRM published on April 7, 2016 proposes that state title IV-E agencies also collect and report data elements related to the Indian Child Welfare Act of 1978 (ICWA)



AFCARS SNPRM: Background

Why are we proposing that state title IV-E agencies collect ICWA-related data in AFCARS?

- Although ICWA was passed more than 30 years ago, it is unclear how well state agencies and courts have implemented ICWA's requirements into practice. There is no comprehensive national data on the status of AI/AN children for whom ICWA applies at any stage in foster care.
- Through collection and reporting the proposed ICWA related data, ACF will be able to provide more comprehensive demographic and case-specific information on all children, including children subject to ICWA, who are in foster care or adopted with title IV-E agency involvement.
- The proposals reflected in this SNPRM manifest Department-wide priorities to affirmatively protect the best interests of Indian children and to promote the stability and security of Indian tribes, families, and children
- The proposals support the Administration's vision of healthy, resilient, and thriving Indian children and families as well as the continued vitality and integrity of Indian tribes.



AFCARS SNPRM: PURPOSE

What will ACF do with the proposed ICWA-related data?

ACF intends to use the data to include the following :

- Address the unique needs of AI/AN children in foster care or adoption, and their families;
- Assess the current state of adoption and foster care programs and relevant trends that affect AI/AN families;
- Improve training and technical assistance to help states comply with title IV-E, and title IV-B of the Social Security Act;
- Develop future national policies concerning its programs; and
- Inform and expand partnerships across federal agencies that invest in Indian families and that promote resilient, thriving tribal communities through several initiatives.



AFCARS SNPRM: Background

Which agencies will have to comply with this SNPRM?

- State title IV-E agencies and Indian tribes, tribal organizations and consortium that operate a direct title IV-E program (tribal title IV-E agencies) must submit AFCARS data as required in statute and regulation.
- However, the ICWA-related data elements proposed in the SNPRM only apply to state title IV-E agencies.



AFCARS SNPRM

Overview of Proposal



AFCARS SNPRM: Overview of Proposal

We proposed that state title IV-E agencies collect and report:

1. Three data elements to determine whether a child is an “Indian child” as defined in ICWA. Without inquiry, many Indian children are not identified, thereby denying children, parents, and Indian tribes procedural and substantive protections under ICWA.
2. 24 additional data elements, as applicable, for children for whom ICWA applies. These data elements are based on ICWA statutory requirements and will help ACF more effectively target oversight, training, and technical assistance resources.
3. The terms in the supplemental proposed rule are defined in ICWA which we cross reference in our NPRM such as, Indian, Indian child, and parent.



AFCARS SNPRM: Overview of Proposal

How did ACF determine what ICWA-related data elements to propose for AFCARS?

- ACF reviewed public comments received in response to the February 2015 AFCARS NPRM.
- ACF consulted with states and tribes.
- ACF consulted with federal experts in the Bureau of Indian Affairs (BIA) at the Department of the Interior and at the Department of Justice.



AFCARS SNPRM: Overview of Proposal

Identify Children to Whom ICWA Applies

1355.43(i)(3)-(5)

The state title IV-E agency must report whether there is reason to know that the child is an Indian child under ICWA by making specific inquiries for all children in the AFCARS out-of-home care reporting population, including:

- inquiring about the child's status as an "Indian child" with the child, mother, father or Indian custodian; whether the child's biological or adoptive parents are members of an Indian tribe; whether the child is a member of or eligible for membership in an Indian tribe; ascertaining whether the domicile or residence of the child, parent, or the Indian custodian is known by the agency to be, or is shown to be, on an Indian reservation.

continues....



AFCARS SNPRM: Overview of Proposal

- If the agency knows or has reason to know that the child is an Indian child under ICWA, the state title IV-E agency must indicate the date that the state title IV-E agency discovered information that indicates that the child is or may be an Indian child and identify all federally recognized Indian tribes identified that may potentially be the Indian child's tribe(s) and
- whether a court order indicates that a court found that ICWA applies, the date of the finding, and the name of the Indian tribe if listed on the court order.



AFCARS SNPRM: Overview of Proposal

If the state title IV-E agency indicates that it knows or has reason to know that the child is an Indian child under ICWA, then the agency must complete the remaining applicable data elements.



AFCARS SNPRM: Overview of Proposal

Collect Information About Children to Whom ICWA Applies:

For each child in the AFCARS out-of-home care reporting population to whom ICWA applies, the state title IV-E agency must report data about:

- Removal
- Notification
- Active Efforts
- Placements (Foster care and adoption)
- Termination of Parental Rights
- Transfers to Tribal Court



AFCARS SNPRM: Overview of Proposal

Removal

1355.43(i)(14)

For each child in the AFCARS reporting population to whom ICWA applies, the state title IV-E agency must report:

- whether the state court found by clear and convincing evidence, in a court order, that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e); and
- whether the court finding indicates that the state court's finding was supported by the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e).



AFCARS SNPRM: Overview of Proposal

Notification

1355.43(i)(8)-(10)

For each child in the AFCARS reporting population to whom ICWA applies, the state title IV-E agency must report:

- whether the Indian child's biological or adoptive parent or Indian custodian were given proper legal notice of the child custody proceeding more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a);
- whether the Indian child's tribe (if known) was given proper legal notice of the child custody proceedings more than 10 days prior to the first child custody proceeding; and if so, which Indian tribe(s) were sent notice of the child custody proceeding and whether the state title IV-E agency replied with additional information that the Indian child's tribe(s) requested, if such a request was made.



AFCARS SNPRM: Overview of Proposal

Active Efforts

1355.43(i)(11)-(13)

For each child in the AFCARS reporting population to whom ICWA applies, the state title IV-E agency must report:

- when the state title IV-E agency began to make active efforts to prevent the breakup of the Indian family prior to the child's most recent out-of-home care episode,
- whether the court found in a court order that the state title IV-E agency made active efforts to prevent the breakup of the Indian family, and that these efforts were unsuccessful, and
- what active efforts the state title IV-E agency made to prevent the breakup of the Indian family (see 25 U.S.C. 1912(d)).



AFCARS SNPRM: Overview of Proposal

Placement: Foster Care

1355.43(i)(15)-(18)

For each child in the AFCARS reporting population to whom ICWA applies, the state title IV-E agency must report:

- which foster care and pre-adoptive placements from a list of five are available to accept placement of the Indian child.
- whether the Indian child's current placement as of the end of the report period meets the placement preferences of ICWA at 25 U.S.C. 1915(b) by indicating with whom the Indian child is placed from a list of six response options.
- if the placement preferences for foster care and pre-adoptive placements were not followed, whether the state court made a finding of good cause, on a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA or the placement preferences of the Indian child's tribe, and the court's basis for the finding of good cause, as indicated on the court order from a list of five response options. Ex: request of biological parents, or the Indian child.



AFCARS SNPRM: Overview of Proposal

Placement: Adoption

1355.43(i)(25)-(29)

For each child in the AFCARS reporting population to whom ICWA applies, the state title IV-E agency must report whether the child exited foster care to adoption per section 1355.43(g). If so, the state title IV-E agency must also report:

- which adoptive placements from a list of four were willing to accept placement of the Indian child.
- whether the placement reported in section 1355.43(h) meets the placement preferences of ICWA in 25 U.S.C. 1915(a) by indicating with whom the Indian child is placed from a list of five response options.
- whether the state court made a finding of good cause, in a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(a) or the placement preferences of the Indian child's tribe, if the placement preferences for adoptive placements were not followed.
- the state court's basis for the finding of good cause, as indicated in the court order, from a list of five response options.



AFCARS SNPRM: Overview of Proposal

Termination of Parental Rights (TPR)

1355.42(i)(19)-(24)

For each child in the AFCARS reporting population to whom ICWA applies, the state title IV-E agency must report:

- whether the rights of the Indian child's parents or Indian custodian were involuntarily or voluntarily terminated.



AFCARS SNPRM: Overview of Proposal

TPR: Involuntary

If the TPR was involuntary, the state title IV-E agency must report:

- whether, prior to ordering an involuntary termination of parental rights, the state court found beyond a reasonable doubt, in a court order, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child
- whether the state court indicates that its finding was supported by the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(f)



AFCARS SNPRM: Overview of Proposal

TPR: Voluntary

If the TPR was voluntary, the state title IV-E agency must report:

- whether there is a court order that indicates that the voluntary consent to termination for the biological or adoptive mother and biological or adoptive father or Indian custodian was made in writing and recorded in the presence of a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian in accordance with 25 U.S.C. 1913.



AFCARS SNPRM: Overview of Proposal

Transfer to Tribal Court

1355.43(i)(6) and (7)

For each child in the AFCARS reporting population to whom ICWA applies, the state title IV-E agency must report:

- whether a court order indicates that the Indian child's parent, Indian custodian, or Indian child's tribe requested, orally on the record or in writing, that the state court transfer the case to the tribal court of the Indian child's tribe, in accordance with 25 U.S.C. 1911(b), at any point during the report period.
- if the state court denied the request to transfer the case to tribal court, the state title IV-E agency report whether there is a court order that indicates the reason(s) why the case was not transferred to the tribal court and the reason for denying a transfer to the tribal court from the following list of reasons: parents objected, tribal court declined the transfer, the state found good cause not to transfer.



AFCARS SNPRM: Overview of Proposal

Compliance and Penalties

- The data file standards and data quality standards proposed in the February 9 2015 AFCARS NPRM apply to the data elements proposed in this SNPRM.
- If the data is non-compliant, title IV-E agencies will have a 6 month opportunity to correct and resubmit its AFCARS data.
- The penalty structure specified in statute is as follows:
 - If the resubmitted data does not meet the regulatory standards, then we will apply a penalty amount of 1/6 of 1% of the agency's title IV-E foster care administrative funds.
 - A penalty of 1/4 of 1% is assessed for each subsequent report period the data is out of compliance.



AFCARS NPRM and SNPRM

Final Rule

AFCARS NPRM and SNPRM: Final Rule



ACF will consider the public comments on this SNPRM as well as comments already received on the February 9, 2015 NPRM and issue one final AFCARS rule.

- Implementation of changes to AFCARS described in this SNPRM will be dependent on the issuance of a final rule. We expect a fall 2016 publication date.
- Precise effective date dependent on publication date of final rule, the final data elements we are requiring agencies to collect and other factors.



AFCARS SNPRM

Next Steps and Resources



AFCARS SNPRM: Next Steps

- The AFCARS SNPRM was published in the Federal Register on **April 7, 2016.**
- There is a **30 day** comment period. Comments are due **on or before May 9, 2016.**
- Please submit comments to: <http://www.regulations.gov/>
- Link to SNPRM:
<https://www.federalregister.gov/articles/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system>



RESOURCES

- Federal Register: <https://www.federalregister.gov/>
- CB Website: <http://www.acf.hhs.gov/programs/cb>
- CB Website, Laws and Policies:
<http://www.acf.hhs.gov/programs/cb/laws-policies>
- CB Website, Info on current AFCARS:
<http://www.acf.hhs.gov/programs/cb/research-data-technology/reporting-systems/afcars>
- CB Website, Statistics and Research:
<http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research>