SB 190

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 15, 1994

SUBJECT: Child Support Enforcement (CSSB 190(JUD))

TO: Senator Robin Taylor
ATTN: Kevin Sullivan

FROM: Terri Lauterbach
Legislative Counsel

You have asked whether CSSB 190(JUD) (Version "E") is drafted only to conform to federal requirements or if there is additional material in the bill that expands CSEA's powers in ways that are not required by federal law.

There appear to me to be a number of items in the bill that are not required by federal law, although not all could be characterized fairly as expansions of CSEA's power. In my opinion, there are

(1) technical "housekeeping" amendments (secs. 9, 11, 13, and 14);

(2) utilization of options allowed to the state (parts of secs. 4 and 8);

(3) continuation of authority currently allowed under state law (part of sec. 20);

(4) new authority for which I have not been able to ascertain the reason, although CSEA may be able to explain (bonding part of secs. 10 and 12 and new language in sec. 15); and

(5) areas where clarification is needed in order to ensure compliance with federal law (secs. 5 and applicability).

DISCUSSION

The main purpose of CSSB 190(JUD) is to bring Alaska Statutes into conformity with federal requirements pertaining to income withholding orders. The federal requirements were passed as part of the Family Support Act of 1988.

Most of the new federal requirements went into effect in November 1992. They required immediate income withholding under support orders issued or modified after October 30, 1990, and enforced by CSEA (e.g., AFDC cases where the right to child support has been assigned to the state). There were also requirements for "initiated" withholding in cases that pre-dated October 1990 but involved arrearages and other circumstances. It is my understanding that all of these requirements relating to AFDC cases have already been implemented by CSEA under AS 25.27.260, which relates to orders to withhold and deliver. The language in AS 27.25.062, which relates to income withholding, has simply been ignored since November 1992, at least with respect to AFDC cases.

Another change made in the Family Support Act of 1988 was not effective until January 1, 1994. That is the requirement for immediate income withholding under support orders issued or modified after December 31, 1993, and **not** enforced by CSEA (e.g., "private" cases, not cases where support has been assigned to the state).

CSSB 190(JUD) would

(1) make AS 27.25.062 and related statutes consistent with existing CSEA practice and federal requirements with respect to income withholding for support orders enforced by the agency and issued or modified after October 1990; and

(2) make the additional changes in AS 27.25.062 and related statutes that are necessary to comply with the new federal requirements that took effect on January 1, 1994, with respect to support orders that are not enforced by the agency.

In my opinion, most of CSSB 190(JUD) is consistent with these federal requirements. There are only the following departures:

(1) **Technical "housekeeping" amendments.** As far as I can tell, secs. 9, 11, 13, and 14 make only technical changes in statutory references that either clean up old technical problems or are necessary to implement the other changes in the bill.

(2) **Utilization of options granted to the state by federal law.**

In sec. 4 of the bill, the language in lines 23 - 25 is not strictly required by federal law. However, federal law does require that withholding must begin at the request of an obligee "if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved." Lines 23 - 25 apparently establish the standards that CSEA suggests using for approval of obligees' requests. The legislature may wish to

set a different standard or leave the standard up to the regulations process; however, a standard is required by federal law.

In sec. 8, proposed AS 25.27.062(m)(1) includes a provision that is optional for the state to include. That provision is the requirement that the agency be a party to the agreement referred to if support has been assigned to the state. While use of the option is probably defensible to protect the state's interests, it is not strictly required by federal law.

(3) **Continuation of current statutory authority.** In sec. 20 of the bill, the part of the repealer that refers to ch. 75, SLA 1991, is not, as far as I can determine, required under federal law. In ch. 75, SLA 1991, the legislature approved a system under which employer information could be gathered more quickly by CSEA. The goal was to find obligors sooner so that support enforcement could be more effective, especially against obligors who moved or changed jobs often. The 1991 employer reporting program will expire in January 1995 unless it is extended by the legislature. Section 20 of this bill would extend the employer reporting program by repealing secs. 2 and 5 of ch. 75, SLA 1991. While this precise method of facilitating child support enforcement is not required under federal law, it is my understanding that the state earns more federal money if our support collection efforts hit certain targets. If expiration of the employer information program would decrease our collection efforts below federal targets, continuation of the program could, arguably, be called "required." However, if the program has not been successful in increasing collections, then that argument could not be made. CSEA could probably help with data about the program's effects.

(4) **New authority for which I have not ascertained a basis in federal law.** (Please note that this does not mean that there is no basis, only that I have not found one. Perhaps CSEA could point one out.)

(A) Bonding/security by obligor. I have not found any basis in federal law for requiring an obligor who requests a formal hearing to post security or a bond pending the outcome of the hearing. See language on page 5, lines 30 - 31 and page 6, lines 22 - 23.

(B) Filing of lien at CFEC. I have not found any basis in federal law for the change made in section 15. Perhaps it would be better characterized as a "housekeeping" amendment, but it is up to the opinion of the legislature whether this central filing is a good idea. I don't think federal law requires it.

(5) **Areas where clarification is needed in order to conform with federal law.** In my opinion, the bill should be clarified in at least two respects to ensure compliance with federal law.

(A) "Days" vs. "working days." On page 3, line 26, "10 days" should be changed to "10 working days" because that is the term used in federal regulations at 45 C.F.R. 303.100(f)(ii).

(B) Applicability to orders issued or modified on or after January 1, 1994. While sec. 3 of the bill correctly incorporates the federally-required standard that immediate income withholding must be part of every support order issued or modified after December 31, 1993, there is no clarification of how this Act, if passed, will apply to the orders that are issued or modified between December 31, 1993, and the effective date of the Act. The Department of Revenue is not currently making immediate income withholding part of its orders. I do not know if the court system is. To ensure compliance with federal law, there should probably be added to the bill an applicability section that clarifies whether CSEA and the courts should automatically add an income withholding order to these support orders or initiate procedures under which the parties to a recent order could show whether the exceptions of sec. 8 apply to their circumstances. I suggest asking CSEA and the court system for suggestions on how to handle the 1994 orders that occur or are modified before the effective date of this bill.

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I hope this explanation is helpful to you and your staff. Please let me know if I can be of other assistance.

TML:lmb
94-056.lmb

Enclosure

KEVIN . .

FISCAL NOTE

STATE OF ALASKA **BILL NO.** SB 190

1994 LEGISLATIVE SESSION

Revision Date:

Dept. Affected: Revenue

Title: Enforcement of Support Orders

BRU: Child Support Enforcement Division

Component: Child Support Enforcement Division

Sponsor: Senate Judiciary Committee

Requestor: Senate Judiciary Committee

COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	147.3	104.5	0.0	0.0	0.0
TRAVEL				0.0	0.0	0.0
CONTRACTUAL	14.6	29.1	21.8	0.0	0.0	0.0
SUPPLIES	2.0	4.0	3.0	0.0	0.0	0.0
EQUIPMENT	20.8	41.5	31.2	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				0.0	0.0	0.0
TOTAL OPERATING	109.0	221.9	160.5	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:	60.0	60.0	60.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.0	221.9	160.5	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent						
TOTAL	109.0	221.9	160.5	0.0	0.0	0.0

POSITIONS:

FULL-TIME	2	4	3	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)
Section 101 of the Family Support Act of 1988 (P.L. 100-485) requires that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED) This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state may charge fees for this service and recover the full cost of administrating the requirement. (continued)

Prepared by: Mary Gay, Director Mary Gay (ccd) Phone: 263-6270

Division: Child Support Enforcement Division Date: 2-21-94

Approved by Commissioner: Darrel J. Rexwinkel Darrell R. Debruyn DSR Date: 2/21/94

Agency: Department of Revenue

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(continuation of Fiscal Note)

PROFESSIONAL SERVICES:

The Division will need 9 additional positions over three years. The Division will need 2 positions in FY 95, 4 positions in FY 96 and 3 positions in FY 97. Positions required for FY 95:

One Accounting Clerk III to receipt payments.

One Clerk IV to set up and maintain case files.

CONTRACTUAL:

Additional cost of long distance telephone service, postage and space rent for the positions.

SUPPLIES:

Additional supplies for the additional positions to include paper, pens, folders,envelopes etc.

EQUIPMENT:

The following is a breakdown of equipment per new position:

Computer	$5,760
Office Modular Furniture	$3,435
Phone equip & service	$1,191
Total	$10,457

REVENUES:

It is planned that the Division, through regulation, would impose fees for this payment processing service. The suggested fee would be $10 per month per case. At this time, it is estimated that the Division will receive approximately 500 new cases per year.

This legislation is required for federal approval of Alaska's State Plan for Child Support Enforcement. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for Alaska"s child support program and possible financial sanctions to Alaska's Aid to Families with Dependant Children program.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director

Region X
M/S RX-34
2201 Sixth Avenue
Seattle, WA 98121

OCT 25 1993

RECEIVED
NOV 02 1993
CSED-DIRECTOR

Mary Gay
Director
Child Support Enforcement Division
550 West 7th, 4th Floor
Anchorage, Alaska 99501-3556

Dear Mrs. Gay:

Thank you for your letter of August 31, 1993, and a copy of the redraft of Senate Bill 190 which addresses the deficiencies noted in our March 30, 1993, letter. We understand that this latest version will be introduced in the second session of the legislature which will convene in January 1994.

We have reviewed the redraft of Senate Bill 190 for compliance with federal regulations. The amendment of Alaska State Statute 25.27.062 will bring the state into compliance with federal requirements in the following areas of wage withholding:

Alaska State Statute 25.27.062(d) - deletes the language allowing for "any other legal defense" as a defense for contesting wage withholding.

Alaska State Statute 25.27.062(c) - addresses Section 101(b) of the Family Support Act which requires states to enact laws requiring the use of procedures under which all child support orders (non-IV-D cases) issued in the state on or after January 1, 1994, will include appropriate language requiring Immediate Wage Withholding.

Based upon your request and the above information, we will defer approval or disapproval of Alaska's State Plan to allow the state to pursue the necessary legislation. It is imperative, however, that this legislation be passed as early in the legislative session as possible. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for your child support program and possible Title IV-A financial sanctions.

We would also like to remind you of the provisions in the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) affecting paternity requirements under title IV-D of the Social Security Act (the Act). As you are aware, Section 13721 of P.L. 103-66 amends Section 466(a) of the Act requiring states to have laws and procedures for simple civil process for voluntary acknowledgement of paternity. The effective date of the paternity provisions of the law is October 1, 1993. However, if state laws are necessary to implement these provisions, the effective date is the date of enactment of state law, but in no event any later than the first calendar quarter after the close of the first regular session of the state legislature that begins after the August 10, 1993, enactment of the Federal law. A copy of the information sent to states regarding P.L. 103-66 is enclosed for your reference.

We hope this information is helpful. If you have any questions or need assistance in meeting your state plan requirements, please contact Linda Gillett at (206) 615-2552.

Sincerely,

Stephen S. Henigson
Regional Administrator

Enclosure

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children and Families

Region X
M/S RX-34
2201 Sixth Avenue
Seattle, WA 98121

MAR 30 1993

CSED

RECEIVED
APR 0 2 1993
CSED-DIRECTOR

Mary Gay, Director
Alaska Child Support
Enforcement Division
Revenue Division
550 West 7th, Suite 410
Anchorage, Alaska 99501-3556

Dear Ms. Gay:

We have received and reviewed the documentation submitted to our office dated September 30, 1992.

As noted on the enclosed preprint page 2.12-10-1: Review and Adjustment of Child Support Obligations, your submission has been given final approval in this area. We are unable to approve section 2.12-1: Wage Withholding. The reason we cannot approve this section is because Alaska CSED does not have statutes and procedures in this area as required by Section 101 (b) of the Family Support Act. As you know, Section 101 (b) of the Family Support Act amends Section 466 (a)(8) of the Social Security Act requiring states, as a condition of state plan approval, to enact laws requiring the use of procedures under which all child support orders issued in the state on or after January 1, 1994, will include appropriate language requiring Immediate Wage Withholding. Congress enacted this provision to ensure that Immediate Wage Withholding would be available to all custodial parents without the need of filing an application for child support services. The state clearly has in place provisions for immediate wage withholding generally.

However, Alaska Statute 25.27.062 (d) describes the method for contesting wage withholding, and, as the statute now stands it is unapprovable. Federal regulations require states to have procedures for contesting a wage withhold order only if there exist "mistakes of fact." Alaska Statute 25.27.062 (d) is in conflict with 45 Code of Federal Regulations § 303.100(b)(1)(iii) because it goes further than federal law intended by adding "...or any other legal defense."

By adding this option for contesting a wage withholding order, the state is giving the non-custodial parent an opportunity to include areas not intended by federal regulations, in terms of contesting the wage withholding order.

It is my understanding that you have had telephone conversations with Phyllis Benton regarding your noncompliance with the Wage Withholding requirement. In that conversation you were able to resolve one of our concerns regarding whether or not the days referenced in Alaska's statutes and procedures are calendar days as required by federal requirements. According to federal policy, when days are stated in state statutes and procedures, as below 10 days, they are universally counted as working days. When days are listed as 10 days or more, they are counted as calendar days. I understand that this issue has been resolved and Alaska uses the federal policy when referring to days. I also understand that a bill will be introduced in the Alaska legislature by a legislator that will modify Alaska Statute 25.27.062. As of your last conversation with Ms. Benton you did not know when the bill would be written and introduced.

As Alaska's state plan now stands, it is not approvable. Failure to enact an appropriate revised statutory provision and to correct the areas we noted in your state plan submission may mean that your state plan is not approvable. This may result in the cessation of federal reimbursement of expenditures for your child support program and possible Title IV-A financial sanctions.

Based on information available at this time, my office will defer approval or disapproval of your state plan. We prefer to allow the state to pursue securing the necessary legislation. To that end we ask that Alaska submit its new statute 90 days after the legislative session ends, or by August 31, 1993, with a new transmittal sheet.

Again, the sole area of noncompliance that we are citing here is the state statutory provision enabling non-custodial parents to contest a wage withhold order, not only as to "mistake of fact," but also as to "any other legal defense."

I hope this information has been helpful. My office is available to assist you in meeting your state Plan requirements. Please contact Phyllis Benton at (503) 553-0943 if you have any questions.

Sincerely,

Stephen S. Henigson
Regional Administrator

Enclosure

cc: Darrel J. Rexwinkel, Commissioner
Department of Revenue
Larry Lufkin, Area Audit Supervisor

DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF CHILD SUPPORT ENFORCEMENT

ADMINISTRATION FOR CHILDREN AND FAMILI
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Program Instruction

ACTION TRANSMITTAL
OCSE-AT-93-06

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Statutory Requirements for Immediate Wage Withholding in All Child Support Orders Initially Issued In the State Not Being Enforced Under Title IV-D of the Social Security Act

STATUTORY REFERENCE: 42 U.S.C. 666(a)(8)(B)

EFFECTIVE DATE: January 1, 1994

BACKGROUND: Section 101 of the Family Support Act of 1988 (P.L. 100-485) amended section 466 of the Social Security Act (the Act) to require that States enact laws and implement procedures for immediate wage withholding in certain cases. For those cases being enforced under title IV-D of the Act, section 466(b)(3)(A) requires States to provide for immediate withholding, in all new or modified orders established on and after November 1, 1990, regardless of whether child support payments are in arrears, on the effective date of the order. Two exceptions to imposing immediate withholding are permitted: (1) if one of the parties demonstrates, and the court or administrative process finds good cause not to require withholding; (2) or a written agreement is reached between both parties for an alternative arrangement. Final regulations at 45 CFR 303.100 implementing this statutory mandate were published on July 10, 1992 [OCSE-AT-92-02).

Section 101 of the Family Support Act also requires that, effective January 1, 1994, States implement immediate withholding in all support orders initially issued in the State which are not being enforced under title IV-D. This program

instruction provides guidance for States in enacting laws and developing procedures, in accordance with amended section 466(a)(8)(B) of the Act, under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under title IV-D of the Act are subject to immediate withholding.

ATTACHMENT: State Plan Preprint Page 2-12-8B

INQUIRIES: ACF Regional Administrators

Robert Harris
Acting Deputy Director
Office of Child Support Enforcement

I. Introduction

This Action Transmittal sets forth the statutory requirements which States must meet in implementing section 466(a)(8)(B) of the Act. States may choose to extend these immediate wage withholding requirements to apply to orders in non-IV-D cases which are modified after January 1, 1994, in addition to orders initially issued after that date. The instructions also address issues raised with respect to implementing immediate withholding in non-IV-D cases.

II. State Plan Requirements

As a condition of Federal funding, a State must comply with the statutory requirements of Section 454 of the Act. Section 454(20) requires that the State IV-D plan provide that the State shall have in effect all of the laws required under the mandatory procedures established in section 466 of the Act. Since the requirements for non-IV-D withholding are part of the mandatory procedures set forth in section 466, States must demonstrate conformity with these requirements as a condition for having an approved State IV-D plan. Section 466(a)(8)(B) of the Act specifies that each State must have laws requiring the use of procedures under which all child support orders initially issued in the State on and after January 1, 1994 and which are not being enforced under Title IV-D will include provisions for:

- Immediate withholding, with exceptions for good cause and alternative arrangements;
- Withholding for overdue support in addition to current support;
- Limitations on amounts withheld based on the Federal Consumer Credit Protection Act (CCPA);
- Withholding without the need to apply for IV-D services or amendment to the order or further action by court/administrative authority;
- Administration of withholding by a public agency or a publicly-accountable alternative;
- Prompt distribution of amounts withheld;
- Employer requirements; 25.27.250
- Priority over other legal process against the same wages under State law; 25.27.250 I
- Optional extension to other forms of income;
- Extension to enforcement of orders of other States; 25.27.033
- Provisions for terminating withholding. 7 AS 25.27.0

These requirements will be described and discussed in the following section.

Attached, is a new State plan preprint page at page 2-12-8B, which must be submitted to the ACF Regional Office by March 31, 1994 (i.e., the end of the first quarter in which the requirement is effective). States failing to demonstrate conformity with the statutory requirements will be subject to State plan disapproval procedures outlined in OCSE-AT-86-21. Non-conformity could result in the suspension of all IV-D funding as well as a portion of title IV-A funding to the State.

III. Explanation of Non-IV-D Withholding Requirements

Section 466(a)(8)(B) of the Act requires immediate withholding for all non-IV-D child support orders initially issued in the State on or after January 1, 1994. In addition, by cross-reference, it extends the same statutory requirements applicable to title IV-D at paragraph (1) and, where applicable, paragraphs (2), (4), (5), (6), (7), (8), (9) and (10) of section 466(b). The specific requirements applicable in non-IV-D cases effective January 1, 1994, are:

A. When Immediate Withholding Is Required; Exceptions

The wages of an non-custodial parent must be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order. As in the case of orders being enforced in IV-D cases, two exceptions to immediate withholding are permitted. Wages shall not be subject to withholding in any case where: (1) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate withholding; or (2) a written agreement is reached between both parties which provides for an alternative arrangement.

B. Limitations on Amounts Withheld

(1) So much of the non-custodial parent's wages must be withheld as is necessary to comply with the order and provide for any fee to the employer which may be required, up to the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)) [CCPA].

(2) If there are arrearages to be collected, amounts withheld to pay such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 303(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

C. No Further Action By Court

Withholding must occur without the need for further action (other than those actions required under these procedures) by the court or other entity which issued such order.

D. Administration of Withholding by Public Agency

Withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments.

The law also allows a State to establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of a public agency) otherwise than through a public agency so long as:

(a) The entity making the collection and distribution is publicly accountable for its actions taken in carrying out such procedures; and,

(b) The procedures assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

E. Employer Responsibilities

1) The employer of any parent who is subject to immediate withholding in a non-IV-D case, upon being given notice of such action, must be required by the State to withhold from the non-custodial parent's wages the amount specified by the notice (which may include a fee, established by the State, to be paid to the employer unless waived by the employer).

(2) The employer must pay such amount (after deducting any fee) to the appropriate agency (or other entity authorized to collect such amounts withheld under the alternative procedure established by the State) for distribution.

(3) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

(4) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate

agency or entity (with the portion which is attributable to each individual employee being separately designated).

(5) The employer must be held liable to the State for any amount which the employer fails to withhold from wages due an employee following receipt by the employer of notice, but the employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(6) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against a non-custodial parent subject to wage withholding because of the existence of the withholding or additional obligations which it imposes upon the employer.

F. Priority Over Other Legal Process

The State must provide that withholding of child support obligations be given priority over any other legal process under State law against the same wages.

G. Other Forms of Income

The State may take such actions as may be necessary to extend its system of withholding so that the system will include withholding from forms of income other than wages, in order to assure that child support owed by non-custodial parents in the State will be collected without regard to the types of such parents' income or the nature of their income-producing activities.

H. Interstate Requirements

The State must extend its withholding system so that such system will include withholding from income derived within the State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by non-custodial parents in the State or any other State will be collected without regard to the residence of the child for whom the support is payable or of the child's custodial parent.

I. Termination

Provision must be made for terminating withholding.

J. Due Process Requirements

Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

IV. Availability of Federal Financial Participation (FFP)

Although States are required to enact laws and procedures for non-IV-D withholding as a condition of having an approved State IV-D plan, the activities mandated at section 466(a)(3)(B) of the Act are for cases not being enforced under a IV-D State plan. FFP is only available for services provided in cases receiving services under title IV-D of the Act. However, in cases where a State has chosen to use its IV-D agency to implement non-IV-D withholding, FFP would only be available for the IV-D costs incurred in implementing a cost allocation system to identify expenditures in IV-D and non-IV-D cases.

V. Exemptions

The provisions at section 466(d) of the Act with respect to exemptions apply to the non-IV-D withholding requirements. States may request, and OCSE may approve, an exemption from one or more of the requirements for the enactment of any law or the use of any procedure or procedures for non-IV-D withholding if the State can demonstrate that the adoption of such laws or procedures would not improve the effectiveness and efficiency of the State child support program. Requests should be sent the appropriate ACF Regional Office in accordance with regulations at 45 CFR 302.70(d) and program instructions set forth in OCSE-AT-88-19.

VI. Questions & Answers Regarding Statutory Requirements

1. **Question:** Must a public agency administer non-IV-D withholding? What are possible options a State may consider in meeting the administrative requirements?

Answer: The State must specify which public entity is responsible for immediate wage withholding in non-IV-D cases. As the Federal statute provides, States may establish, or permit the establishment of, alternative procedures to carry out non-IV-D withholding as long as the entity it designates is under the supervision of a public agency. The entity must follow procedures which will assure prompt distribution of amounts withheld, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

A State could designate the IV-D agency, or the entity which administers withholding in IV-D cases, to be responsible for the administration of non-IV-D withholding. If so, there must be a system for allocating costs between IV-D and non-IV-D operations, since FFP is not available for providing services to non-IV-D cases.

Since October 1, 1985, States have had the option set forth in §302.57 of establishing procedures under which support payments are made through the IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the non-custodial parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted. States may charge a fee for these services, not to exceed $25 annually and not to exceed State costs. A State may adapt this option to meet the 1994 non-IV-D withholding requirements.

A State could also opt to designate clerks of court or other appropriate judicial entities to administer non-IV-D withholding, since immediate withholding is applied at the time the support order is initially entered.

Alternatively, the State could choose a private entity, such as a bank, to administer this activity in non-IV-D cases as long as the entity is publicly accountable for the collection and distribution of support withheld.

2. Question: Must the State designate only one entity in each jurisdiction to administer withholding?

Answer: No. Although IV-D regulations at 45 CFR 303.100(g)(2)(ii) require that States may designate only one entity to administer withholding in each jurisdiction, such a restriction does not apply to withholding in non-IV-D cases.

3. Question: If there is no FFP for non-IV-D withholding activities, may the State pass costs on to the user through fees or other cost recovery systems?

Answer: Yes. States may finance their withholding responsibilities in non-IV-D cases by charging fees and recovering costs. However, in cases where the State has elected to use the option set forth at 45 CFR 302.57, and all withholding payments are made through the IV-D agency or entity designated by the State to administer the State's IV-D withholding system, the fee must not exceed $25 per year or actual costs (whichever is less). If the State designates a bank or other public entity (other than the agency designated to administer IV-D withholding), then these limitations do not apply.

4. Question: Is non-IV-D withholding subject to specific regulatory requirements at 45 CFR 303.100, for timeframes for distribution of amounts withheld?

Answer: No. Federal regulatory requirements applicable to IV-D cases do not apply to immediate wage withholding in non-IV-D cases.

5. **Question:** Must States meet the criteria in Federal regulations for a finding of good cause or for an alternative arrangement in IV-D cases in extending immediate withholding to non-IV-D cases?

Answer: No. Federal regulations at 45 CFR 303.100(b)(2) and (3), which set certain minimum criteria for good cause findings and alternative arrangements in IV-D cases, do not apply to non-IV-D cases. Consequently, States may develop their own criteria for non-IV-D cases which differ from or are consistent with those required under IV-D regulations.

6. **Question:** Is the State responsible for sending the notice of withholding to the employer in non-IV-D cases effective January 1, 1994?

Answer: No. Federal statutory requirements for withholding in non-IV-D cases do not require States to send the withholding notice to the employer. States may choose to do so or may direct the obligor, obligee, or their attorneys, to send the withholding notice to the employer as soon as the initial child support order is issued.

Many States have already developed standardized wage withholding notices which incorporate the information which must be given to employers. States may adapt these documents for use in non-IV-D situations.

7. **Question:** Is the State required to take enforcement actions in non-IV-D cases when there have been good cause findings, or alternative arrangements and the non-custodial parent subsequently becomes delinquent in an amount which would trigger an initiated withholding under IV-D requirements? Or when the non-custodial parent leaves employment and becomes delinquent?

Answer: No. The statute does not require the State to take enforcement actions, initiate, or to re-initiate withholding in non-IV-D cases beyond subjecting the non-custodial parent to immediate withholding when a child support order is initially issued in the State. Enforcement of withholding orders may be done by States or left to obligees or their attorneys to take such action. Any individual who wants child support enforcement services may also apply for IV-D services.

8. **Question:** What are the State's responsibilities with respect to allocation of withheld amounts when there are multiple withholding notices involving both non-IV-D and IV-D cases for a single non-custodial parent?

Answer: If multiple withholdings from a single non-custodial parent's earnings involve both a IV-D and a non-IV-D case, Federal requirements must be applied to all withholdings with respect to that non-custodial parent. Federal regulations at 45 CFR 303.100(a)(5), governing IV-D cases, require States, in cases where there are more than one withholding against a single non-custodial parent, to allocate withholding, but in no case should the allocation result in one family getting nothing. For consistency, States may choose to adopt allocation methods mandated in Federal regulations for IV-D cases for all withholdings, whether IV-D or non-IV-D. Since receipt of current support is essential to many families, the State should attempt to ensure that current support is paid first to any family due current support.

9. **Question:** Do the specific criteria for termination of withholding in IV-D cases apply to non-IV-D withholding?

Answer: No. Federal regulations at 45 CFR 303.100(a)(7) which set certain minimum criteria for termination of withholding in IV-D cases do not apply to non-IV-D cases.

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADVANCE COPY

ADMINISTRATION FOR CHILDREN AND FAM
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

FINAL RULE

OFFICE OF CHILD SUPPORT ENFORCEMENT

ACTION TRANSMITTAL
OCSE-AT-92-02
July 10, 1992

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Final Rule - Immediate Income Withholding; Review and Adjustment of Child Support Orders; Notice of Assigned Support Collected

ATTACHMENT: Attached is a final rule which implements sections 101, 103(c) and 104 of the Family Support Act of 1988 (P.L. 100-485). Current Federal regulations are revised to require that States establish immediate income withholding, with certain exceptions, in the case of support orders issued or modified on or after November 1, 1990, and being enforced under the IV-D State plan; effective October 13, 1990, to require periodic review of support orders pursuant to a State plan, and adjustment of such orders, as appropriate, in accordance with State guidelines for support award amounts; and, beginning January 1, 1993, to require that States provide monthly notices of collections to individuals who have assigned their rights to support to the State unless the State obtains a waiver in order to send quarterly notices. Section 103(c) also establishes more specific review and adjustment requirements effective October 13, 1993, and those requirements will be addressed in a separate rulemaking.

REGULATION REFERENCE: 45 CFR Parts 302 and 303.

SUPERSEDED MATERIAL: OCSE-AT-90-07, dated August 17, 1990

EFFECTIVE DATE: July 10, 1992

INQUIRIES: ACF Regional Administrators

Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302 and 303

RIN 0970–AA63

Child Support Enforcement Program: Immediate Income Withholding; Review and Adjustment of Child Support Orders; Notice of Assigned Support Collected

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements three provisions of the Family Support Act of 1988 (Pub. L. 100–485). Section 101 of this Act requires immediate wage withholding, with certain exceptions, in the case of support orders issued or modified on or after November 1, 1990, and being enforced under the IV–D State plan. Immediate wage withholding begins January 1, 1994, for orders issued on or after that date, if the case is not being enforced by the IV–D program. Section 103(c) of this Act requires periodic review of support orders and adjustment, as appropriate, in accordance with State guidelines for support award amounts, effective October 13, 1990. Section 103(c) also establishes more specific review and adjustment requirements effective October 13, 1993; those requirements will be addressed in a separate rulemaking. Section 104 of this Act requires monthly notices of collections to individuals who have assigned their rights to support to the State. Monthly notices are required beginning January 1, 1993, unless the State obtains a waiver in order to send quarterly notices.

DATES: *Effective date:* This rule is effective July 10, 1992.

Compliance dates: The various compliance dates of the statutory requirements are:

November 1, 1990—Immediate Income Withholding (§ § 302.70 and 303.100)
October 13, 1990—Review and Adjustment of Orders [§ § 302.70, 303.4, and 303.8)
October 13, 1993—Review and Adjustment of Orders
January 1, 1993—Notice of Assigned Support Collected (§ 302.54)
January 1, 1994—Immediate Income Withholding, all orders.

FOR FURTHER INFORMATION CONTACT: Policy Branch, OCSE, specifically:

Marilyn Cohen (202) 401–5366 regarding review and adjustment of child support orders;
Lourdes Henry (202) 401–5440 regarding monthly notice of support collected;
Craig Hathaway (202) 401–5367 regarding immediate wage withholding.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collection of information requirements in this final regulation, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated as follows:

Requirement	Average time per response
§ 302.54(b) (1) and (2): notices	30 seconds.
§ 302.54(c): waiver	1 hour, one time.
§ 302.70(a)(10): procedures	8 hours, one time.
§ 303.8(b)(1): plan	8 hours, one time.
§ 303.100(b)(3): agreement	1 minute.
§ 303.100(f)(1)(ii): payment	30 seconds.

These information collection requirements were approved under OMB control number 0970–0110.

Statutory Authority

This regulation is published under the authority of the following provisions of the Social Security Act (the Act), as amended by Public Law 100–485: sections 466 (a)(8) and (b)(3) with respect to immediate income withholding; section 466(a)(10) with respect to periodic review of individual support award amounts; and section 454(5)(A) covering timing of notice of support collections. This regulation is also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background and Description of Regulatory Provisions

1. Notice of Assigned Support Collected

Former 45 CFR 302.54 required States, at least annually, to provide notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under 45 CFR 232.11. The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and indicate the amount of

support collected which was paid to the family. This regulation implemented section 454(5) of the Act as amended by the Child Support Enforcement Amendments of 1984.

Section 104 of the Family Support Act of 1988 amended section 454(5)(A) of the Act to require States to send a monthly notice of support payments to individuals who have assigned support rights to the State. A State may provide quarterly notices if the Secretary determines that a monthly notice would impose an unreasonable administrative burden on the State.

To implement these statutory changes, we redesignated the current §§ 302.54 (a) and (b) as new paragraphs (a) (1) and (2) which remain in effect until December 31, 1992.

Effective January 1, 1993, § 302.54(b) requires that the State have in effect procedures for issuing monthly notices.

Under § 302.54(b)(1), the IV–D agency is required to provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11, unless no collection is made in the month, and the assignment is no longer in effect, or the conditions for issuance of a quarterly notice set forth in paragraph (c) are met. If, in a former AFDC case which continues to receive IV–D services, a State is collecting support for a previous period for which the assignment remains in effect in accordance with § 302.51(f), the State must send a monthly notice to the family.

Section 302.54(b)(2) requires the monthly notice to list separately payments collected from each absent parent when more than one absent parent owes support to the family and indicate the amount of current support and arrearages collected and the amount of support collected which was paid to the family. If no support collection is made during a month, the State is not required to provide a notice to the family. A State may, at its option, provide a monthly notice when no support collections are received.

Under § 302.54(c), a waiver may be granted allowing the State to provide quarterly, rather than monthly, notices if the State does not have an automated system that performs child support enforcement program activities, or has an automated system that is unable to generate monthly notices. Effective October 1, 1995, States are required to have in effect automated systems that perform child support enforcement activities. Upon the request of a State, the Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State: (1) Until September 30, 1995, does not have an automated system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or (2) uses an automated voice response system which provides the information required under paragraph (b)(2).

Under paragraph (c)(2), a quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) and must contain the information set forth in paragraph (b)(2).

2. Review and Adjustment of Child Support Orders

Beginning with the enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378), each State had to establish guidelines for child support award amounts in the State, as a condition for State IV–D plan approval. These guidelines were not binding, but had to be made available to all judges and other officials with authority to determine award amounts.

Under section 103 of Public Law 100–485, Congress required that States use the guidelines as a rebuttable presumption that the amount of the award computed according to the guidelines is the correct amount of child support to be awarded. A written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by State criteria, is sufficient to rebut the presumption in that case. To ensure further that the use of the guidelines will result in appropriate support award amounts, section 103 requires that the guidelines be reviewed at least once every four years. Final regulations governing these aspects of section 103 were published on May 15, 1991 (56 FR 22335).

Use of guidelines does not ensure that orders, over time, continue to meet the support standards set by the guidelines. To address this problem, section 103 of Public Law 100–485 phases in a requirement for the periodic review and adjustment of support orders, in accordance with the support guidelines in the State. Under section 103, the Social Security Act (the Act) is amended by adding a new section 466(a)(10) of the Act. Section 466(a)(10)(A), effective October 13, 1990, requires States to have procedures for review and adjustment of orders in IV–D cases, consistent with a State plan indicating how and when review and adjustment would occur. Review may take place at the request of either parent subject to the order or may be initiated by the State itself. An adjustment to the award is required, as appropriate, if the award amount is found not to be in accordance with the State's guidelines, which must be used as a rebuttable presumption in establishing or adjusting support obligations in the State.

The new section 466(a)(10)(B), effective October 13, 1993 (or earlier at State option), requires the State to have implemented a process whereby orders enforced under title IV–D will be reviewed within 36 months after establishment of the order or the most recent review of the order and adjusted in accordance with the State's guidelines for support award amounts.

The new section 466(a)(10)(C) requires States to have procedures for notifying each parent subject to an order in effect in the State, that is being enforced under the State plan, of their rights concerning reviews and proposed adjustments. Each parent must be notified: of the right to request the State to review the order; of any review, at least 30 days before it commences; and of a proposed adjustment or of a determination that there should be no change in the award amount. In the latter case, the parent must have at least 30 days after notification to initiate proceedings to challenge the proposed adjustment or determination.

Proposed regulations governing review and adjustment requirements of section 103 were published on August 15, 1990 (55 FR 33414). We received many comments in response to the proposed rule which urged that we delay publication of final regulations governing review and adjustment requirements until demonstration projects underway in a number of States were completed. These projects, mandated by section 103(e) of Public Law 100–485, are developing, testing and evaluating model procedures for reviewing child support award amounts in Delaware, Colorado, Illinois and Florida. The results of the demonstration projects are required to be reported to Congress by March 31, 1993. A similar project was conducted in Oregon and the final report was issued in April 1991. Commenters also raised difficult issues with respect to review and adjustment, especially those concerning requirements *for* interstate cases. In response to these concerns, we have decided to publish a separate rule on the review and adjustment requirements which are effective October 13, 1993 to benefit fully from the wisdom gained from the review and adjustment projects. We believe this is the most prudent approach, given the time remaining before the 1993 requirements go into effect. Therefore, this final rule only addresses the requirements for

review and adjustment effective October 13, 1990.

Section 302.70 Required Laws.

Under § 302.70 States are required to enact certain laws and implement certain procedures designed to improve the effectiveness of the Child Support Enforcement program. Paragraph (a)(10) requires States to enact necessary laws and have procedures in effect for the review and adjustment of child support orders in accordance with the requirements of 45 CFR 303.8. Because of the addition of paragraph (a)(10) and revisions to § 303.100, we are making technical corrections to § 302.70(a) by revising paragraph (a)(8). We are making technical corrections to § 302.70(d)(1) and (2) to clarify that a State may apply for an exemption from any of the requirements of § 302.70(a) if it can demonstrate that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program.

Section 303.4 Establishment of Support Obligations

Section 303.4(c) is amended to require States to periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

Section 303.7 Provision of Services in Interstate IV–D Cases

Section 303.7(b)(2) is amended to clarify that the 20 calendar day time frame for referral of an interstate case is tied to the receipt of any information necessary to process the case, if appropriate.

Section 303.8 Review and Adjustment of Orders

The title of this section has been changed to "Review and Adjustment of Child Support Orders," to be consistent with the statutory language of Public Law 100–485.

Section 303.8(a) Definitions

Section 303.8(a) contains definitions designed to clarify key aspects of the review and adjustment process.

Paragraph § 303.8(a)(1) limits "adjustment" to the child support provisions of an order. Under § 303.8(a)(1)(i), "adjustment" means an upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards. Under § 303.8(a)(1)(ii), "adjustment" also means the provision for the health care needs of the child through health insurance or other means.

Paragraph (a)(2) defines "parent" for purposes of § 303.8 to include any custodial parent or noncustodial parent (or, for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

Paragraph (a)(3) defines "review" as an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine the appropriate support award amount, and the need for a provision in the order addressing the child(ren)'s health care needs through health insurance or other means under State guidelines.

Section 303.8(b) Plan for Review and Adjustment

Plan

Paragraph (b) requires the State to develop and implement a plan for review and adjustment of orders by October 13, 1990. Under paragraph (b)(1), the State must have a written and publicly available plan indicating how and when a child support order, in effect in the State, will be periodically reviewed and adjusted. Paragraph (b)(2) specifies the requirements that the State must meet for the period October 13, 1990 through October 12, 1993 with respect to orders being enforced in IV–D cases. Paragraph (b)(2)(i) requires that the State must use the plan specified in paragraph (b)(1) to determine whether such orders should be reviewed. Paragraph (b)(2)(ii) specifies that the State must initiate a review, in accordance with the plan, at the request of either parent subject to the order or of a IV–D agency.

Pre-Review Notice

Paragraph (b)(2)(iii) specifies the requirements for notifying each parent subject to a child support order in effect in the State regarding review and adjustment. Under this paragraph, the State must notify each parent of any planned review of the order at least 30 calendar days before commencement of the review.

Adjustment of the Order

Paragraph (b)(2)(iv) specifies that if the review determines that there should be a change in the child support award amount, the State must adjust the order in accordance with the State's guidelines for child support described in § 302.56. In addition, an adjustment must be made if the review determines that provision for the health care needs of the child(ren) in the form of health insurance or other means, as indicated by the State's guidelines, is required.

Post-Review Notice

Paragraph (b)(2)(v) specifies the requirements for notifying each parent subject to a child support order in effect in the State following any review. This paragraph requires notification of (A) any adjustment or a determination that there should be no change in the order; and (B) each parent's right to initiate proceedings to challenge the adjustment or determination. Either through pre-decision review, appeal or administrative review, within at least 30 calendar days of the date of the notice.

3. Wage or Income Withholding

Section 1 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) added sections 454(20) and 466 of the Act to require all States to implement certain mandatory procedures which had been proven to noticeably increase the effectiveness of State programs, including procedures for wage withholding.

Section 466 required that States have in effect two distinct procedures for carrying out a program for wage withholding. The first, required under section 466(a)(1) and (b) of the Act, pertained only to cases being enforced through the IV–D agency. Under this requirement, States must have and use a procedure under which wages of an absent parent shall be subject to withholding in IV–D cases on the date the absent parent fails to make payments in an amount equal to one-month's support obligation. States were also required to implement the withholding at any earlier date that is in accordance with State law or that the absent parent may request. Withholding was to begin without amendment to the order or further action by the court. The Act also specified other elements of the withholding system for IV–D cases such as requirements for prior notice to the absent parent, basis for appeal, restrictions on the maximum amounts to be withheld, notice to the employer, and interstate withholding. These requirements were implemented in regulations at former 45 CFR 303.100 (a) through (g).

The second procedure, required by section 466(a)(8) of the Act and implemented at former § 303.100(h), provided that all new or modified orders issued in the State include a provision for wage withholding when an arrearage occurs, in order to ensure that withholding is available without the necessity of filing an application for IV–D services.

Section 101 of Public Law 100–485 amends section 466 of the Act to require that States enact laws and implement procedures for immediate income withholding in certain cases. Under amended section 466(b)(3), a new subparagraph (A) provides that immediate withholding is required, effective November 1, 1990, for all IV–D cases with new or modified orders on the effective date of the order, unless one of the parties demonstrates, and the court or administrative authority finds good cause not to require the withholding, or a written agreement is reached between the parties which provides for an alternative arrangement.

For cases being enforced by the IV–D agency which are not subject to immediate withholding, section 101 of Public Law 100–485 amends the current requirements at section 466(b)(3) by creating a new subparagraph (B) which provides that the absent parent's wage shall be subject to withholding on the earliest of: The date on which arrearages occur which are at least equal to the support payable for one month; the date on which the absent parent requests that withholding begin; the date on which the custodial parent requests that withholding begin (in accordance with the standards and procedures the State may establish); or an earlier date the State may select.

Section 101 of Public Law 100–485 also amends section 466(a)(8) of the Act by revising the current language as redesignated subparagraph (a) to require that child support orders not described in subparagraph (B) contain wage withholding provisions, and creating a new subparagraph (B) to require that, effective January 1, 1994, States have procedures providing for withholding in all support orders not being enforced by the IV–D agency, regardless of whether support payments are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding in any case where one of the parties demonstrates, and the court or administrative authority finds that there is good cause not to require immediate income withholding or a written agreement is reached between the parties which provides for an alternative arrangement.

To address these statutory changes we have adopted the following regulatory amendments:

We have amended § 303.100 to reiterate the statutory changes outlined above by revising paragraph (a) so that it will now cover withholding requirements which are common to all orders being enforced under the IV–D State plan, and redesignating paragraphs (b) and (c) as new paragraphs (d) and (e), to provide for advance notice to the absent parent and for procedures when the absent parent contests the withholding in cases where it is not immediate (i.e., initiated withholding). We have created a new paragraph (b) providing for immediate withholding for these orders which are issued or modified on or after November 1, 1990, and a new paragraph (c) providing for initiated withholding for orders not subject to immediate withholding under paragraph (b). We have also redesignated paragraphs (d), (e) and (g) as new paragraphs (f), (g), and (h) to provide for, in both immediate and initiated IV–D withholding, notice to the employer, procedures for administration, and interstate withholding. Former paragraph (f), which allowed States the option to extend withholding to other forms of income, has been moved to a new paragraph (a)(9) since it is applicable to all types of withholding. Finally, we have redesignated paragraph (h) as new paragraph (i) to address provision for withholding in non-IV–D child support orders.

General Withholding Requirements

We have consolidated the requirements which are common to all IV–D withholdings in § 303.100(a) using the unchanged statutory authority of section 466(b) of the Act. Paragraphs (a)(1) and (2) require that States must provide for wage withholding for all IV–D cases for both current and overdue support. Paragraph (a)(3) establishes limits of amounts to be withheld in all IV–D cases, as required by the Consumer Credit Protection Act (hereinafter CCPA). Paragraph (a)(4) requires that withholding in all IV–D cases must occur without the need for any amendment to the order or any other action by the court or entity that issued it, except actions required or permitted under § 303.100.

Paragraph (a)(5), requires that States develop procedures for allocation of support among families when there is more than one withholding in a case but in no case shall the allocation result in a withholding not being implemented for one of the support obligations. This revision is not specified in the statute. However, we are using the authority granted to the Secretary at section 1102 of the Act to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Upon publication of the current requirement in 1985, we stated that, in response to comments received on the proposed rule, we had changed the requirement that the employer respond to multiple withholdings on a first-come-first-served basis to one in which the State would allocate support payments among the families. We also suggested several mechanisms States could use in allocating amounts to be withheld, one of which was to give top priority to AFDC cases. We have since become aware that some States may have implemented this suggestion by deciding to allocate all available withholding up to the CCPA limit to the AFDC family, leaving no amounts available for a second non-AFDC family. This was not our intent, and this language in paragraph (a)(5) clarifies that, although a State may give priority to AFDC families, in no case shall the allocation result in another non-AFDC family receiving no support through the withholding process.

Paragraph (a)(6) requires that IV–D withholdings be carried out in full compliance with all procedural and due process requirements of the State.

Paragraph (a)(7) requires States to have procedures for promptly terminating withholding in all cases when there is no longer a current order and all arrearages have been satisfied. At State option, a State may also allow termination when the absent parent requests termination and withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3).

Paragraph (a)(8) requires that States must have procedures for promptly refunding amounts improperly withheld. Paragraph (a)(9) permits a State to extend its withholding system to include forms of income other than wages.

Under paragraph (a)(10), support orders issued or modified in IV–D cases must require the absent parent to keep the IV–D agency informed of the name and address of his or her current employer, whether the absent parent has access to employment-related health insurance coverage and, if so, the health insurance policy information. This will simplify implementation of withholding.

Immediate Withholding in IV–D Cases

We have implemented section 466(b)(3)(A) of the Act by creating a new § 303.100(b) providing for immediate wage withholding. Paragraph (b)(1) requires that, in the case of a support order being enforced under title IV–D that is issued or modified on or after November 1, 1990, the wages of an absent parent shall be subject to withholding, regardless of whether support payments are in arrears, on the effective date of the order, except that

such wages shall not be subject to withholding in any case where one of the parties demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding, or a written agreement is reached between the parties which provides for an alternative arrangement.

Paragraphs (b)(2) and (b)(3) establish minimum definitions of "good cause" and "written agreement." Although not specified in the statute, we are using our authority under section 1102 of the Act to set these requirements because we believe that Congress intended that immediate withholding would be implemented in most cases. Consequently, paragraph (b)(2) provides that a finding of good cause by the court or administrative authority must be based on, at a minimum: (i) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and (ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders. We believe that the best interests of the child should remain paramount and other concerns secondary. Certainly, payment of past-ordered support will provide a measure of the absent parent's good faith. In modification proceedings, States may choose not to allow past timely payment to justify avoiding immediate withholding.

These criteria were formulated to exclude certain other considerations. For example, we do not believe that good cause would be demonstrated if the absent parent objects to immediate withholding on the grounds that it would be inconvenient, since the purpose of the support order and withholding is to provide for the best interests of the child. Payroll deduction is a convenient means of paying debts. Moreover, the overall thrust of the immediate withholding provisions have, in effect, removed any reason for an employer to believe that the employee is not meeting his or her obligations in a responsible manner, since all child support orders (IV-D and non-IV-D) will eventually be subject to this automatic provision. This also means that a demonstration by the absent parent that he or she has established a good credit rating should not qualify for good cause, since the imposition of immediate withholding contains no assumption that the absent parent would default on support payments. Also, a credit rating may or may not take into consideration an absent parent's support obligation, or that obligation may not be heavily weighted.

Paragraph (b)(3) provides that a "written agreement" means a written alternative arrangement signed by both parents, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or by an administrative authority. We have given States the option in IV-D cases in which there is an assignment of support rights to the State to be a party to any alternative arrangement between the absent and custodial parents which meets the above condition because of the State and Federal interest in securing support for those in need of public assistance. We have provided that such written agreement be reviewed and entered in the record by the court or administrative authority for protection of the best interests of the child as well as the parents. Such an agreement may contain stipulations between the custodial and absent parents; and, at State option, the State in IV-D cases in which support rights have been assigned, which are in addition to those required under this paragraph.

Initiated Wage Withholding

We have implemented revised section 466(b)(3)(B) of the Act by creating a new § 303.100(c) for initiated wage withholding in cases where immediate withholding, as set forth in § 303.100(b), would not apply because the support order was issued before, and not modified after, November 1, 1990. Paragraph (c), in conjunction with paragraphs (a), (d), (e), and (f) will continue, with some modification, the original wage withholding requirements contained in Public Law 98-378 for existing orders being enforced under title IV-D.

Section 303.100(c) sets forth requirements for withholding with respect to cases in which wages are not subject to immediate withholding in paragraph (b), including cases subject to a good cause finding or a written agreement. Under paragraph (1), the wages of the absent parent shall become subject to withholding on the date on which payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of: (i) The date on which the absent parent requests that withholding begin; (ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or (iii) Such earlier date as State law or procedure may provide. In the latter instance, we have specified that the State may select an earlier date via law or procedure to indicate that this must apply on an across-the-board, rather than a case-by-case basis. For example, a State may wish to set a lower trigger of one week's support delinquency, rather than the outside limit of a month's delinquency required by statute and regulation. The State may not apply a more stringent standard on an individual case basis, but must apply it to all cases if this approach is selected.

These provisions parallel the requirements of Public Law 98-378 with one important exception. The new requirement at section 466(b)(3)(B)(ii) of the Act and at § 303.100(c)(1)(ii) now allows the custodial parent to request that withholding be imposed without regard to whether support payments are in arrears, if the State agrees based on procedures and standards which it may establish to determine when this is appropriate. Since the statute has given States authority to determine the criteria under which such requests by the custodial parent may be approved, we have not established requirements for these procedures and standards. However, such procedures and standards may not limit custodial parents' requests to cases where the 30-day triggering arrearage is met or cases where the custodial parent requests review and adjustment of the order and the order is adjusted. Under this provision, a State could choose to establish a simple administrative procedure to implement withholding upon custodial parent request if an absent parent is not meeting the terms of a written agreement for an alternative arrangement, or the support order was established or modified before November 1, 1990. Alternatively, a State may opt to require a return to court in order to implement withholding where no qualifying arrearage exists. In any case, State statute, rules or procedures must provide for withholding upon request in cases not subject to withholding in which the 30-day triggering arrearage has not been met, and in which State standards are met. This provision will also enable States which desire to do so to bridge the gap between the original initiated withholding mandated in Public Law 98-378 and the new immediate withholding requirements of Public Law 100-485 by incorporating either some, or all, of the new immediate withholding provisions on behalf of their existing initiated

withholding caseload. We encourage States to establish expedited procedures for custodial parents in such cases to request withholding as a means of ensuring regular and timely support payments consistent with protecting the due process rights of the other parent.

Paragraph (c)(2) requires the State to send the advance notice required under paragraph (d) to the absent parent within 15 calendar days of the appropriate date under paragraph (c)(1) if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 15 calendar days of locating the absent parent. Obviously, advance notice is unnecessary if the absent parent requests withholding under paragraph (c)(1)(i).

Paragraph (c)(3) requires that the only basis for contesting an initiated withholding is a mistake of fact, defined as an error in identity of the absent parent or in the amount of support due.

Advance Notice to the Absent Parent in Cases of Initiated Withholding

Section 303.100(d)(1) requires timely advance notice to the absent parent in cases of initiated withholding on the date specified in paragraph (c)(2) and specifies the required contents of the notice. We have also established a timeframe, in paragraph (d)(2)(ii), for sending notice to the employer in States which are not required to provide advance notice to the absent parent because they had a withholding system in effect on August 16, 1984, which provides any other procedures necessary to meet the procedural due process requirements of State law. Under this timeframe, a State is required to send notice to the employer under paragraph (f) within 15 calendar days of the appropriate date specified in paragraph (c)(1) if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

State Procedures When the Absent Parent Contests Initiated Withholding in Response to the Advance Notice

Section 303.100(e) addresses State procedures to be followed when the absent parent contests a proposed initiated withholding. We have changed the citations within this paragraph to reflect the redesignation of other paragraphs in this section.

Notice to the Employer for Immediate and Initiated Withholding

Section 303.100(f) provides for notice to the employer for both immediate and initiated wage withholding. In paragraph (f)(1)(ii), we have added a requirement that the employer report to the State the date on which the amount sent to the State was withheld from the absent parent's wages. This date is needed by the State to ensure proper distribution of support under current statute and regulations. If the employer fails to report this date to the State, the IV-D agency must, in accordance with § 302.51(a)(4), reconstruct the date of withholding by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

Paragraph (f)(2) requires that, in the case of immediate wage withholding under paragraph (b), the State must issued the notice to the employer specified in paragraph (f)(1) within 15 calendar days from the date the support order is entered if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address. We believe that a 15-day turnabout is consistent with the intent of immediate wage withholding. Paragraph (f)(3) requires that, in cases of initiated withholding, if the absent parent fails to contest withholding within the period specified, the State must send the notice to the employer within 15 calendar days of the end of the contest period if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address. Paragraph (f)(4) requires that if the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer within 15 calendar days of locating the new employer's address, in accordance with the requirements of paragraph (f)(1) that the withholding is binding on the new employer.

Administration of Withholding

Section 303.100(g) provides for certain administrative actions by the States and is applicable to both immediate and initiated withholding.

With the technology available to transfer funds electronically, many employers have payroll systems (or contracts with service bureaus) which can automatically deposit wages in more than one financial account. We encourage employers, who currently have the capability to do so, to begin remitting withheld wages electronically as soon as possible to any State's withholding agency which has the capability to receive such funds electronically on the same day funds are deposited in employees' bank accounts. OCSE is developing model procedures for electronic transfer of child support payments through cooperation with the National Automated Clearinghouse Association (NACHA) which sets rules and administers the Automated Clearinghouse Network. A work group has also been formed representing employers, financial institutions and child support agencies to develop a standard format for transferring both income withholding payments and the related data. OCSE will continue to keep States informed of efforts in this area. In anticipation of the requirement that all States have operational automated child support enforcement systems by October 1, 1995, in accordance with section 123 of Public Law 100-485, we require in paragraph (g)(2) that, no later than October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State. This will greatly reduce the time it takes for support payments to reach families in need of them.

Under § 303.100(g), States are allowed to designate more than one public or private entity to administer withholding on a State or local basis under the supervision of the State withholding agency. However, because of the need to reduce the burden on employers and to simplify procedures for electronic transfer of withheld amounts, we encourage States to designate a single public agency to administer withholding in IV-D cases. This will simplify withholding for employers in both intrastate and interstate cases whether it is accomplished through electronic transfer or other means, and is essential to ensure a simple process for electronic transfer of withheld child support obligations.

We also encourage States to use electronic funds transfer for withholding wages in non-IV-D cases. In many States, funds paid through wage withholding could be deposited directly in custodial parents' bank accounts. Custodial parents' bank account statements would provide good documentation of payments received. Using non-IV-D cases would enable States to implement wage withholding easily in non-IV-D cases. (Historically, payment in IV-D cases have gone through the IV-D system rather than directly to custodial parents' accounts because of additional information needed in IV-D cases.)

Interstate Withholding

Section 303.100(h), requiring that State law must provide for procedures to extend the State's withholding system

so that system will include interstate cases, is applicable to immediate and initiated withholding. Paragraph (h)(1) provides that a responding State may register orders for purposes of withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes in paragraph (h)(5). This is a formal statement in the regulations of our policy since wage withholding was originally enacted in 1984, with a clarification that "delay" means a delay beyond required timeframes.

Paragraph (h)(3) requires that the initiating State must notify the State in which the absent parent is employed within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out the withholding. For consistency, we have also amended the requirements at § 303.7(b)(2), for provision of services in interstate cases, to require that within 20 calendar days of determining the absent parent is in another State, and, if appropriate, the receipt of any information needed to process the case, the initiating IV–D agency must refer any interstate case to the responding State's interstate registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage withholding, and State income tax refund offset in IV–D cases. In addition, the last sentence of paragraph (h)(3) requires that, if necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of the request for information.

Under paragraph (h)(4), the State in which the absent parent is employed must implement withholding in accordance with paragraph (h)(5) upon receipt of the notice required in paragraph (h)(3). Finally, paragraph (h)(5) requires that the State where the absent parent is employed must provide the absent parent with notice, if appropriate; an opportunity to contest an initiated withholding, if appropriate; send notice to the employer; and notify the initiating State when the absent parent is no longer employed in the responding State. Paragraphs (h) (6) and (7) set forth choice of law requirements in interstate cases.

Provision for Withholding in Child Support Orders

Paragraph (i) amends the former requirement in 45 CFR 303.100(b) which implemented the requirement in section 466(a)(8) of the Act that all child support orders include provision for withholding, to assure that withholding is available if arrearages occur, without the necessity of filing application for IV–D services. In requiring all orders issued after January 1, 1994, to be subject to immediate withholding (except where exclusions due to good cause or alternate arrangement between the parties are applicable), section 103(b) of Public Law 100–485 redesignated prior section 466(a)(8) (which was effective October 1, 1985) as section 466(a)(8)(A) and limited its applicability to orders *not* covered under the immediate withholding requirement for all non-IV–D orders issued in 1994 and thereafter. Therefore, since prior section 466(a)(8) was effective October 1, 1985, we have limited the applicability of 45 CFR 303.100(i) to orders which were issued between October 1, 1985 and January 1, 1994, or are modified on or after January 1, 1994. In response to comments on the proposed rule, we are not including in this final rule requirements effective for non-IV–D orders issued in 1994 and thereafter.

Response to Comments

We received comments on the proposed rule published August 15, 1990, in the Federal Register (55 FR 33414) from over 70 commenters representing national organizations, State and local IV–D agencies, child advocacy groups and private citizens. Comments and our responses appear below.

I. Notice of Assigned Support Collected

General

1. *Comment:* We received many comments stating that sending monthly notices to individuals who have assigned rights to support under § 232.11 would be costly due to the price of postage; would be time-consuming and take time away from providing other mandated services; create a tremendous burden on the States; and cause confusion on the part of the AFDC recipient resulting in increased letters and phone calls. Another commenter recommended that States be permitted to provide quarterly notices of collection to avoid increased program costs. One commenter suggested that the regulation be amended to require a monthly notice only upon request.

Response: Section 104 of the Family Support Act of 1988 amended section 454(5)(A) of the Social Security Act to require States to send a monthly notice of support payments collected to individuals who have assigned rights to support to the State. The statute does not authorize States to send notices only upon request but does allow a State to provide quarterly notices if the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden.

2. *Comment:* One commenter asked, if States are contracting with individual counties to provide IV–D services, is the monthly notice requirement at § 302.54(b)(2) passed on to the counties?

Response: Yes, a political subdivision operating the IV–D program for the State must provide monthly notice in accordance with § 302.54. However, it is permissible for the State to issue all such notices at its option.

3. *Comment:* One commenter asked us to clarify whether the amount of support collected includes the $50 pass-through payments for each months of collection.

Response: Yes, the notice should reflect the amount of support collected, including the $50 pass-through payments.

Content of Notice

1. *Comment:* We received several comments suggesting including additional information in the notice, i.e., the amount of support paid that month, year to date amount paid and amount applied to the AFDC debt and the debt to the family. The commenters suggested that the notice should be sent to non-AFDC, AFDC and Medicaid clients and should be sent at least quarterly even if no payments have been made.

Response: The monthly notice must include the amount of support paid during that month. However, the Federal requirements are minimum standards. States have the option to include additional information in the monthly notice to individuals who have assigned rights to support under § 232.11 or to send notice to individuals other than those who have assigned rights to support under § 232.11.

Providing One-time Notice Under Proposed Section 302.54(b)(1)

1. *Comment:* Many commenters objected to the proposed requirement at § 302.54(b)(1) and the IV–D agency must notify individuals who have assigned rights under § 232.11 that a monthly notice will be provided for each month in which support is collected. Some commenters maintained that there is no statutory requirement for providing such a notice, and that the proposed language went beyond the intent of Congress.

Several commenters felt that such a notice would be redundant, costly, and confusing. Another commenter asserted that this one-time notice would involve the production and mailing of notices at considerable expense to the States, with no benefit to clients. One commenter claimed that there was no compelling reason for announcing that monthly notices will be provided and contended that if the monthly notices were clearly worded and understandable, no prior explanation should be required. These commenters recommended that the advance notice requirement be deleted. One commenter suggested that a notice be required even when no collection had been made in that month so as not to cause confusion and an increase in the number of telephone inquiries. This commenter suggested giving the client the option of waiving the right to receive the notice on a monthly basis.

Response: We proposed that a one-time notice be provided to individuals who have assigned rights to support under § 232.11 to inform these individuals that if no support collection was made during a month, the State would no longer provide a notice to the family. Prior policy with respect to annual notice of support collections required States to provide an annual notice even if no collections were made during the year. Because States will be required, effective January 1, 1993, to provide monthly, rather than annual notice, we are not requiring States effective that date to send a monthly notice even if no collection is made. In view of the overwhelming negative response to the one-time advance notice requirement, and the distinct possibility that it will create more confusion than it will eliminate, we are deleting it from the final rule. States may determine how or whether to deal with any confusion over this change in policy. One suggestion would be to include this change in policy as part of the last annual notice before monthly notices begin to be sent.

Automated Voice Response System/ Toll-Free Telephone Numbers

1. *Comment:* We received a number of comments in favor of using an automated voice response system to meet the monthly notice requirements. The commenters believe this method is faster, more cost effective and more convenient than a computer-generated form mailed to the custodial parent once a month. One commenter requested that we put language in the regulation regarding using an automated voice response system. Another commenter stated that providing a monthly notice at the request of the recipient, is contradicting HHS's position on the proper interpretation of the statute that notice may not be sent only upon request. On the other hand, another commenter argued that the final regulations should change the word "provide" to "send" for consistency with the statute, clarify that written notice must be sent and that an automated voice response system does not meet the requirement for sending a monthly notice.

Response: Section 454(5)(A) does not require that monthly notice be "sent," but rather that the AFDC "individual will be notified on a monthly basis * * *." We believe that automated voice response systems have proven to be worthwhile, cost-effective and in some ways more responsive than monthly written notice. In using an automated voice response system, an individual would place a toll-free call to a specified telephone number, provide certain personal identification information to guarantee confidentiality, and receive a message over the telephone regarding the amount of support collected during the month on his or her behalf, case status and other information. A number of States currently use such a system with positive responses from AFDC recipients. In the State of Washington the Department of Social and Health Services has an automatic response system called KIDS (Kids Information Delivery System) which responds to questions regarding child support case activities. This system receives an average of 23,000 calls per day. The IV-D staff view the system as a relief from the overwhelming number of calls (freeing them to pursue establishment and enforcement activities), and clients see the benefits of obtaining quick information about their payments. The District of Columbia also has an automated voice response system that handles more than 700 calls per day. The system operates 24-hours a day and can handle more telephone calls more efficiently than a comparable activity using human operators. Agency staff use the time made available by this system to perform needed enforcement activities. This system is updated daily with no necessity of downtime. In addition, the IV-D program in Philadelphia, Pennsylvania has an automated voice response system which handles more than 2,000 calls per day.

However, we agree that the use of an automated voice response system alone may not be adequate. Therefore, these final regulations require States which have an automated voice response system to provide quarterly, rather than monthly, written notices. In this way, individuals entitled to notice of collections will benefit from both easy access to information through the automated voice response system as well as being assured quarterly written notice of collections. (See also discussion following under *Waivers.*)

2. *Comment:* One commenter stated that since an automated voice response system only reaches those who want the information, a State with a non-automated hotline should be allowed to do likewise. The State can answer the inquiries manually by accessing its automated distribution system. Local offices can also respond to such inquiries. The option should be given to all States regardless of whether the State has an automated voice response system.

Response: While use of both systems require a request to be made for information, we do not believe use of a hotline is equally effective. Use of an automated voice response system eliminates the need for State employees to respond to individual requests, a task that has proved overwhelming in State after State. Use of an automated voice response system allows State employees to work cases, not just answer questions about status. While use of a hotline manned by caseworkers can be a helpful public service, it may not substitute for monthly notice. Access to information through an automated voice response system enables individuals served by the program to obtain information quickly and conveniently.

3. *Comment:* One commenter indicated that clients should receive a monthly written notice if payments are made, and that having a toll-free number available for them to call is not acceptable. Many low-income families do not have telephones.

Response: While some families do not have telephones, anyone has access to a public telephone. Automated voice response systems are accessed using toll-free numbers and, therefore, obviate any long distance telephone charges. In addition, quarterly notices must be sent if the State uses an automated voice response system.

4. *Comment:* One commenter asked us not to allow States to substitute phone inquiry systems, automated or otherwise, for monthly written notices of child support collections. The information needed to make the notice meaningful is much too complex to be conveyed in response to a telephone inquiry.

Response: Automated voice response systems have proved to be very effective at providing information about case status and collections. Automated

daily updates of this information are also possible. We believe that a system of this type can be designed to be easily understandable, effective, and efficient and provide all of the information required by these regulations.

5. *Comment:* One commenter asked us to clarify whether or not the automated voice response system is eligible for enhanced Federal Financial Participation (FFP).

Response: The development of an automated voice response system is eligible for enhanced Federal funding at the 90 percent matching rate if the functionality is an integral part of an approved Statewide comprehensive automated system and if all other requirements for IV–D funding are met. If the automated voice response system is developed apart from the Statewide comprehensive system, funding is available at the regular match rate of 65 percent. In either case, Federal matching at 66 percent is available for operation of the automated voice response system.

Waivers Under Proposed Section 302.54(c)

1. *Comment:* One commenter suggested that a waiver be allowed even if a State has an operational automated system which can produce the monthly notices and that waivers be renewable periodically after October 1, 1995. A commenter requested continuing waivers especially if a State is under court order requiring the issuance of notices more complex than those required to meet Federal regulatory requirements. Another commenter asked if the availability of a toll-free phone number for collection information (as well as general information) would be considered as an additional factor justifying permission being granted for quarterly notices. One commenter asked if a State can apply for a waiver of the monthly notice requirement if it has a certified automated system, but believes that the mailing costs would be excessive.

Response: We revised the regulations to allow indefinite waiver of the monthly notice requirement if States send quarterly notices and have an automated voice response system which provides all required information in § 302.54(b)(2). We believe that the combination of quarterly notices and an automated voice response system adequately addresses divergent concerns with respect to administrative burden and a State's responsibility to provide notice. The regulation does not allow use of a hotline manned by agency employees during regular business hours to justify sending quarterly notices because it is not as accessible as an automated response system, is too labor intensive, can divert resources from other pressing enforcement agency responsibilities, and, too frequently, is inadequate to meet the demands for information. Given the availability and advantages of an automated voice response system and the mandate that all States develop automated information management systems by 1995, we do not believe use of a hotline is an adequate substitute for monthly or quarterly notice.

With respect to granting waivers based on mailing costs, section 454(5)(A) of the Act allows quarterly notices only if a State demonstrates an unreasonable administrative (not just cost) burden. Any such costs, moreover, must be balanced against the benefits of frequent notices of collection which the Congress perceived in enacting this statutory requirement.

States that generate monthly notices using their automated system and States which receive waivers to provide quarterly notices should not be overly burdened by these requirements. Therefore, the Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State: (1) Until September 30, 1995, does not have an automated child support enforcement system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or (2) uses an automated voice response system which provides the information required under paragraph (b)(2). A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) and must contain the information set forth in paragraph (b)(2). For a waiver to provide quarterly notices to be extended beyond September 30, 1995, the State must use an automated voice response system which provides the information required under paragraph (b)(2). Waivers will be granted as a part of the State plan approval process.

2. *Comment:* A few commenters stated that waivers should not be given to States with computer systems that do not currently generate notices. States should be required to program computers to generate notices.

Response: Effective October 1, 1995, States are required to have in effect Statewide automated child support enforcement systems. However, many States do not currently have a comprehensive automated system. Any automated system developed to meet the 1995 requirements for a Statewide system must produce mandated notices of collections. We believe it is reasonable to allow a State that cannot currently generate notices using an automated system a waiver to send quarterly notices because sending monthly notices would impose an unreasonable administrative burden on the State.

3. *Comment:* One commenter asked us to clarify for those States which are not State-administered whether the waiver will include all jurisdictions within the State.

Response: For States which are not State-administered, the waiver will include all jurisdictions within the State.

II. Review and Adjustment of Support Orders

This final regulation only addresses requirements for review and adjustment of support orders effective October 13, 1990. We are issuing a separate regulation to address the requirements for review and adjustment which take effect on and after October 13, 1993. In that regulation, we will address, for the post-October 1993 period, specific requirements for interstate review and adjustment, grounds for adjustment, timeframes for review and adjustment, and notice of the right to request a review.

Comments and our responses which relate to the October 13, 1990 requirements for review and adjustment appear below:

Section 302.70—Required State Laws

1. *Comment:* Several commenters indicated that State agencies need a strong Federal mandate to support their efforts to obtain new legislation that will facilitate a comprehensive periodic review and adjustment program. They suggested that § 302.70(a)(10) be expanded to specifically require States to adopt laws that provide for: (1) A quantitative standard for adjustment, (2) agency subpoena power that may be enforced administratively and (3) a clear statement that agreements between parents settling child support obligations are contrary to public policy.

Response: Section 303.8 sets forth specific Federal requirements for review and adjustment of orders effective October 13, 1990. Congress allowed States discretion in developing their plans for how and when child support orders in effect in the State will be periodically reviewed and adjusted between 1990 and 1993. In 1993, more stringent requirements become effective requiring reviews in certain cases at 36-month intervals. As States develop their plans and enact legislation implementing review and adjustment in the States, we encourage them to consider authorizing agency subpoena

power that may be enforced administratively, and otherwise facilitating the review and adjustment process in anticipation of the 1993 statutory mandates. The OCSE is funding several demonstrations related to periodic review and adjustment, and we are committed to widely disseminating knowledge of desirable practices employed by the demonstration States or learned elsewhere across the country. However, we do not believe such specific mandates were intended by the Congress with respect to States' review and adjustment activities between 1990 and 1993.

With respect to stipulated agreements, any child support obligation incorporated within such agreement must be set in accordance with State guidelines for child support awards, or there must be a written finding or finding on the record by the court or administrative agency determining that the guideline amount is unjust or inappropriate in the particular case. (See final rules on presumptive guidelines published May 15, 1991 (56 FR 22335)).

2. *Comment:* In response to the requirement that States have laws effective October 13, 1990 requiring that States have procedures for review and adjustment of child support orders, one commenter contended that this timeframe was unreasonable as it would be virtually impossible to have State law enacted by October 13, 1990.

Response: Section 466(a)(10) of the Act was enacted on October 13, 1988. This permitted States a full two-year implementation period within which to enact legislation and procedures in order to be in compliance with the requirements effective on October 13, 1990.

3. *Comment:* One commenter requested that § 302.70(d)(1) be changed to permit States to apply for an exemption from the required State law criteria for review and adjustment. The commenter indicated that under certain circumstances a State could demonstrate that procedures for review and modification would not increase the effectiveness and efficiency of its Child Support Enforcement program based on the cost of implementing these procedures.

Response: We have revised paragraph § 302.70(d)(1) to eliminate reference to specific mandated procedures. By referencing § 302.70(a) in its entirety, States may request an exemption from any mandated procedure, including review and adjustment of orders. Exemption requests must meet the requirements of OCSE-AT-88-19 (December 28, 1988).

4. *Comment:* One commenter asked whether OCSE has the authority to direct the activities of courts or other agencies serving non-IV-D clients in regard to review and modification of support orders.

Response: OCSE does not have the authority under the Family Support Act to direct the activities of courts or other agencies with respect to review and adjustment of orders in non-IV-D cases. However, the State, in order to have an approved State IV-D plan, may need to enact laws and procedures which bind the courts and other authorities involved in the review and adjustment of orders being enforced under the IV-D program. As directed by the Congress, the Secretary of HHS is also conducting a study of the impact of extending review and adjustment services to non-IV-D cases.

Section 303.4—Establishment of Support Obligations

1. *Comment:* Several commenters urged OCSE to put timeframes in a separate section, independent of the timeframes for establishing support orders set forth in § 303.4 because 90 days is insufficient time for review and adjustment in certain cases such as interstate cases.

Response: We have not included timeframes for review and adjustment in § 303.4(d) because we agree that separate timeframes for review and adjustment are warranted. States have flexibility in their plans for review and adjustment to indicate how and when child support orders will be periodically reviewed and adjusted for the three years commencing on October 13, 1990. Therefore, we are not setting timeframes for review and adjustment in this final rule. We address timeframes for review and adjustment of orders in a separate regulation to be issued governing requirements effective on and after October 13, 1993.

State Responsibilities and IV-D Agency Responsibilities

1. *Comment:* Questions were raised on the State's responsibilities as differentiated from the IV-D agency's responsibilities. One commenter noted that the language of Public Law 100-485 distinguishes the State's duties which may be carried out by the IV-D agency or by some other arm of the State from other duties which are specifically the responsibility of the State IV-D agency. The commenter further noted that proposed § 303.8 reflected this distinction in the description of the State's responsibilities for conducting the review and adjustment process. The commenter was concerned that the preamble rationale contradicted this by specifying that the IV-D agency must respond to requests for review by the absent parent for review and adjustment.

The commenter presented the following rationale: The review and adjustment section of Public Law 100-485 clearly distinguishes between the "State" and "State child support enforcement agency," or IV-D agency. Under that section, some duties lie generally with the State, which means that they may be carried out by the IV-D agency, or by some other arm of the State, according to the individual State scheme. Other duties are assigned to the State child support agency, and are specifically the responsibility of that entity.

Section 466(a)(10)(A) states, "The State must, at the request of either parent subject to the order, or [at the request] of a State child support enforcement agency, initiate a review of such order, and adjust such order, as appropriate, in accordance with the guidelines * * *." The statute makes a clear distinction between the "State" and the "State child support enforcement [or IV-D] agency," a distinction that is recognized throughout the Federal regulations, most particularly in the definition 45 CFR 301.1. There, "State" is defined as "the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam," while "IV-D agency" (the State child support enforcement agency referred to in the Family Support Act) is defined as "the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV-D of the Act." To interpret the statute any other way would require the IV-D agency to respond to a request for modification from itself, a function not within its power to provide, and by its terms contradictory.

This distinction between the duties of the State and those of the IV-D agency is crucial. State child support enforcement agencies were created under title IV-D of the Social Security

Act with a specific goal and purpose: to reduce AFDC dependency and promote family economic self-sufficiency, by establishing and enforcing child support awards. This is a valid State purpose, carried out by one State entity. Yet States have many goals and interests, carried out by many entities. States have, for example, an interest in creating just and impartial forums for the resolution of disputes and protection of all State citizens. Commonly, this State purpose is realized through the State court system, quasi-judicial processes, State administrative processes, or some combination thereof.

Response: We agree with the commenter's characterization of the statute and believe it is the best way to accommodate divergent State processes for establishing/adjusting child support awards. Therefore, § 303.8 reflects the distinction between the State and the IV–D agency in the description contained therein of the State's responsibilities for conducting the review and adjustment process. Throughout the provision, the regulation consistently describes the duty of conducting the review and adjustment process as a State responsibility. This appropriately reflects the Act, which does not specify the IV–D agency (or any other State entity) as the specific focus for the State's responsibility to conduct reviews and adjustments. The commenter was correct in pointing out that our statement in the preamble should have stated that the State, not the IV–D agency, responds to the absent parent's request for review and adjustment. At the State's discretion, the forum for review and adjustment may be the State court system, a State administrative process, or some other mechanism.

These regulations appropriately reflect statutory language which places responsibility for review and adjustment with the State. However, while this allows States to develop review and adjustment processes within appropriate forums or agencies in the State, it in no way relieves the State of the responsibility to meet Federal requirements, as a condition of IV–D State plan approval, or from the consequences specified by statute should they fail to do so.

States may allocate the various review and adjustment functions as they see fit between the administrative agency and the courts, or based on the availability of administrative, quasi-judicial, and judicial processes. By virtue of their varied administrative and judicial structures, States may choose to allocate differently the screening, review, and adjustment functions, with some conducting much of the review process in the administrative agency, while others place the review process in the adjudicatory body, whether it be through quasi-judicial or judicial process, or a combination thereof.

We urge States to examine the work underway in those States with Federally-supported demonstration projects or who are otherwise pursuing innovative approaches to carry out review and adjustment. For example, both Florida and Colorado review and adjust orders using the judicial system but attempt to obtain obligor and obligee stipulations to a modified order prior to filing a motion to adjust in court. Delaware uses the IV–D administrative agency for some processes and the court for others. Delaware is testing two review and adjustment processes: a mediation process using the existing structure and a mail-based stipulation process, thereby requiring two separate sets of procedures. Oregon uses the IV–D agency for the entire review and adjustment process. The Oregon agency found advantages to using an administrative process, including the fact that it was less costly and that hearings could be conducted with the parties by telephone.

The regulations would allow States to address issues which arise in some States where there may be a perceived conflict of interest for a IV–D agency attorney, such as representing or advocating for an obligor seeking a downward adjustment. The IV–D agency must provide services deemed appropriate and in the best interests of the child. In cases in which application of the guidelines indicates the appropriate support award amount is less than the obligor is currently required to pay, we do not believe there will be a conflict for the State IV–D agency to serve primarily an administrative function rather than that of legal advocate and present these facts to the decision-maker.

Section 303.8—Review and Adjustment of Child Support Orders

Scope of Adjustment—Section 303.8(a)(1)

1. Comment: Several commenters suggested that the regulatory language refer to "adjustment" rather than "modification" to be consistent with the statutory language. They indicated that the use of the term "adjustment" would enable States to change the support award amount in accordance with guidelines without having to otherwise show a change in circumstances necessary to warrant a modification, which may be required by State statutory or case law.

Response: We concur with the suggestion that regulatory language be consistent with statutory language. Therefore, we use the term "adjustment" instead of "modification". In addition, we are using "orders" instead of "obligations" as "orders" is the term used in section 466(a)(10) of the Act.

2. Comment: One commenter requested that we add a definition of "support" to include the availability of health insurance coverage as a basis for triggering the modification process.

Response: Under current regulations at § 303.31(b)(1), the IV–D agency is required to petition for health insurance that is available to the absent parent at reasonable cost in cases in which there is an assignment of support rights to the State and the custodial parent does not have satisfactory health insurance other than Medicaid, and in other cases when requested by the individual applying for services. Rather than define "support" we believe it is more appropriate, and achieves the same goal, to define "adjustment" to mean an upward or downward change in the amount of child support based upon an application of State guidelines, consistent with the requirements at § 302.56, for setting and adjusting child support awards and/or providing for the child's health care needs through health insurance or other means.

3. Comment: One commenter asked whether the IV–D agency is responsible for modification of alimony provisions of an order. The commenter questioned mortgage and schooling provisions when treated as support in an order, and suggested that IV–D services be clearly limited to situations where child support is explicitly spelled out. Applications for services should be rejected if other factors are weighed heavily in the original order.

Response: Section 103 of the Family Support Act specifically provides for review and adjustment of child support orders only. Clearly, under the law which this regulation implements, review and adjustment does not extend to aspects of the decree other than child support. The law links the review and adjustment process to use of guidelines for setting child support awards. Therefore, neither the law nor these regulations provide an avenue under the IV–D program for adjusting spousal support awards. Under § 302.71(a)(2), effective October 1, 1985, the State must secure support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and

the child support obligation is being enforced under the title IV–D State plan. Furthermore, these regulations are not meant to create an avenue under the IV–D program for review and adjustment of ancillary provisions for orders, such as custody or visitation rights. The IV–D agency should inform the applicant of what services are available under the IV–D program; what other services may be available and the cost thereof, and what services the IV-D agency may not provide.

Definition of Parent—Section 303.8(a)(2)

1. Comment: One commenter requested as to define parent to include "custodial parent, non-custodial parent or any custodial beneficiary".

Response: We complied with this request in our definition of parent. This will ensure that the appropriate persons affected by a review and/or adjustment will be contacted during the process.

2. Comment: Several commenters asked that the definition of "parent" be extended to include State IV–E and Medicaid agencies.

Response: We have defined "parent" to include any custodial parent or non-custodial parent (or for purposes of requesting a review, any person or entity who may have standing to request an adjustment to the child support order). We have not further delineated what persons or entities may be considered a "parent" for purposes of review. While we recognize that, generally, the parties to a child support order are the two parents, other custodial placements for children receiving IV–D services are possible, under which an individual or entity acts in the stead of a parent. For example, a child for whom child support is due under an order may be in foster care placement and receiving services through the State IV–E program. Certainly, if the State is either a party to the underlying support order or, under State law or procedure, has standing to bring or intervene in a legal proceeding for adjustment of the amount of child support, the State IV–E agency could request a review in such a case.

3. Comment: Several commenters raised concerns about providing review and adjustment of orders in Medical Assistance Only (MAO) cases. One commenter noted that such cases have medical support rights assigned to the Medicaid Agency, not to the IV–D agency. Another commenter requested MAO cases be treated as non-AFDC cases as there is no child support assignment.

Response: Non-AFDC applicants for Medicaid services are required to assign medical support rights to the State as a condition of receiving Medicaid and are treated as non-AFDC cases under the IV–D program. See final regulations on providing services in these cases published February 26, 1991 (56 FR 7388). The IV–D agency is required to seek health insurance coverage in these cases in accordance with § 303.31. However, if the custodial parent has satisfactory health insurance coverage or the order requires the absent parent to provide health insurance coverage, the State must review and adjust the order only upon request of the absent or custodial parent.

Definition of Review—Section 303.8(b)(3)

1. Comment: One commenter requested the definition of review be placed with other definitions in § 303.8 for clarity.

Response: We agree that all the definitions pertaining to review should be in one section. Therefore, we have placed the definition of review in § 303.8(a).

2. Comment: Several commenters requested that we not require "complete, accurate, up-to-date" information as part of our definition of review to allow States to impute income to a parent who may be unemployed or underemployed or for whom no income information could be obtained.

Response: We agree with this suggestion and have deleted these terms in the final regulation. "Review" is defined as an objective evaluation of information necessary for application of the guidelines. Income may be imputed to a party by a decisionmaker, when appropriate, and permitted under State law and procedures.

3. Comment: A commenter suggested that review and adjustment be defined as a "legal proceeding before a court or administrative body at which a new support award is determined by engaging in fact-finding to determine those facts necessary for the calculation of a support award under the State's guidelines and determining what the new award shall be". Another commenter suggested that review be defined as an administrative, quasi-judicial or judicial process with a right of appeal.

Response: We agree with these commenters and have incorporated their concepts in the definition of "review". The definition of "review" is "an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body, or agency, of information necessary for application of the State's guidelines for support to determine: (i) the appropriate support award amount, and (ii) the need to provide for the health care needs of the child(ren), through health insurance or other means. The definition is broad enough to allow flexibility concerning where the review takes place to recognize variances in State processes across the country. Therefore, States may decide the appropriate forum for conducting reviews.

Plan for Review and Adjustment—Section 303.8(b)

Written and Publicly Available Plan—Section 303.8(b)(1)

1. Comment: One commenter felt that public availability of the plan for review and adjustment would be too burdensome. Another commenter recommended public input to the State's plan for review and adjustment.

Response: We have reviewed these suggestions and believe it is important for the plan to be available to the public. This requirement need not be burdensome if States publicize where one may go to examine a copy of the State's plan which is available for public inspection. Although there is no requirement to have input, we encourage States to ask for and respond to public comments.

2. Comment: One commenter suggested we maintain the distinction between the State's plan for review and adjustment and the State IV–D plan in the final rule and preamble.

Response: We have maintained the distinction between the State's plan for review and adjustment and the State IV–D plan by noting, as appropriate, the title IV–D State plan or State's plan for review and adjustment.

Commitment of Resources

1. Comment: The proposed regulation required that the plan must "* * * show the commitment of resources necessary to review orders in all IV–D cases upon the request of either parent subject to the order or of a State child support enforcement agency." Numerous commenters asked for a definition of resources and felt that it would be difficult for a State to show the commitment of resources. They pointed out that this requirement is not specified in the Family Support Act nor in any other pertinent regulation.

Response: In response to many comments stressing how difficult it would be for States to show the commitment of resources, we are deleting this proposed requirement. We believe the requirement is unnecessary because existing regulations at § 303.20(c)(5) require States to have an organizational structure and sufficient resources to meet program requirements.

including performance and time standards contained in Federal regulations. This includes adequate resources to establish and adjust support orders.

Targeting Cases for Review

1. Comment: Numerous commenters requested that we delete the proposed requirement that the plan must target cases for review between 1990 and 1993, and modify orders, if appropriate, in IV–D cases in which there is an assignment of support rights to the State because there is no justification for giving priority to public assistance clients over non-public-assistance clients. One commenter asked whether a State plan can specify reviewing only AFDC cases with support orders over 10 years old.

Response: We have deleted this requirement from the final regulation. From October 13, 1990 to October 13, 1993, the IV–D agency may request review in those cases that meet the criteria for review and adjustment under the State's plan. This is consistent with Congressional intent to allow States flexibility during the first three years of review and adjustment of orders. We encourage States to seriously explore and test innovative processes during this period. States should use the period between October 13, 1990 and October 12, 1993 to prepare and plan for more stringent requirements in 1993. However, we strongly encourage States to target for review and adjustment the oldest cases or those cases that seem ripe for review (particularly those in which there is an assignment of support rights to the State) in anticipation of the 1993 requirement that specifies "* * * the order is to reviewed not later than 36 months after the establishment of the order or the most recent review * * *." (See also responses in next section for discussion of the need for States to anticipate impact of reviewing most orders over three years old effective October 13, 1993.)

With respect to reviewing only AFDC cases with support orders over 10 years old, a State's plan for review and adjustment may not exclude large categories of IV–D cases, for example non-AFDC cases, entirely.

Which Orders Must Be Reviewed

1. Comment: One commenter recommended we make clear that the State must initiate a review at the request of either parent only if the case meets the criteria set out in the State's plan.

Response: Effective October 13, 1990, each State is required to have developed and implemented a plan for the review and adjustment of orders. The plan must indicate how and when child support orders in effect in the State are to be reviewed. Between October 13, 1990 and October 12, 1993 each State's plan would specify adequate thresholds, grounds, timeframes or other conditions governing the review and adjustment process in the State. We agree that upon receipt of a request from either parent or the IV–D agency, a decision to review and adjust, if appropriate, must be made based on the State's plan.

While States are given latitude in conducting reviews according to individual State plans between 1990 and 1993, we advise States to consider implementing the 1993 requirements from the very beginning in both statute, where needed, and in the State's plan for review. This would ensure a minimum of disruption from an administrative standpoint, as well as encourage a more rapid implementation of the program changes that Congress envisioned. Between now and 1993, States should plan to review their existing IV–D cases in which support is assigned to the State and the orders will be more than three years old by October 13, 1993. States should anticipate the statutory requirement that, effective October 13, 1993, the State must review and adjust, if appropriate, most orders in AFDC cases which have not been reviewed or modified within the past 36 months. Some States have implemented plans under which the entire AFDC caseload is being reviewed in equal monthly proportions (and opportunity is being given to the parties in non-AFDC cases to request a review) in advance of the October 13, 1993 effective date, so that the number of cases with orders over three years old will be fewer on that date, and more manageable. Advance planning in recognition of the potential impact of, and mandatory requirement for, the periodic review of cases at three-year intervals is a prudent consideration.

2. Comment: Several commenters have requested clarification of the State's responsibilities as of October 13, 1993. They would like to know whether all cases that are 36 months old or older are immediately subject to review on October 13, 1993, if there is an assignment of support rights to the State. These commenters argued that the State merely has to begin a process to review such orders on that date and has until some future date, perhaps 3 years later, to complete reviews on all old orders.

Response: Section 466(a)(10)(B) of the Act specifies "* * * beginning 5 years after enactment of this paragraph or such earlier date as the State may select, the State must implement a process for the periodic review and adjustment of child support orders being enforced under this part under which the order is to be reviewed not later than 36 months after the establishment of the order or the most recent review * * *." The statute requires this review, and adjustment if appropriate, in most AFDC cases but only upon request in non-AFDC cases. Therefore, starting on October 13, 1993, States are required to review child support orders in AFDC cases that are 36 months old or older unless the State determines the review would not be in the best interests of the child and neither parent has requested a review. The statute does not allow States an extended period after 1993 to complete reviews in old orders.

We disagree with commenters that States should be given additional time after 1993 to review and adjust orders over three years old. Congress has given States five years to prepare for the 1993 requirements and did not intend a State to wait a full five years after enactment of the Family Support Act to begin to review old orders. States have considerable advance notice in order to adopt any necessary laws, to anticipate the number of cases potentially needing review when the 36-month requirement becomes effective, and to otherwise address the operational implementation in a meaningful way. Further delay would only result in children being deprived of the appropriate amount of financial and medical support to which they are entitled. Therefore, starting in 1993 is not enough: States should be anticipating the impact of the 1993 date and should be working to reduce the number of old orders which require review. States are strongly urged to begin this process as soon as possible so that it is not too cumbersome a task in 1993.

3. Comment: One commenter asked if the review is to be initiated or completed 36 months after establishment of the order or of the most recent review.

Response: A review must be initiated, not completed, within 36 months after establishment of the order or the most recent review.

4. Comment: Commenters suggested that States be required to adopt criteria that are broad and inclusive, thus ensuring that orders that have never been updated or are very old will automatically qualify; that AFDC and non-AFDC cases be treated the same; and that no category of cases is systematically excluded from review.

Response: States have discretion to establish conditions and circumstances to qualify a case for review in their plan

for review and adjustment. However, they cannot categorically exclude any segment of the caseload, e.g., non-AFDC cases or interstate cases in which there is an order in the State that can be adjusted under State law.

5. Comment: One commenter asked whether the plan can identify circumstances that would not warrant a review. Commenters asked whether a request may be rejecting if it is deemed frivolous. Another commenter noted that the plan adopted by the State should articulate the standards which the State will employ in determining whether an award will be subject to review.

Response: States' plans for review and adjustment must articulate how and when orders in the State will be reviewed. This means the State's plan must address what the process for review and adjustment is, as well as under what circumstances an order will or will not be reviewed and adjusted. Therefore, States should adopt plans for review and adjustment of orders which articulate standards and criteria for rejected requests as frivolous, such as frequent requests where there is no indication of a substantial change in circumstances. If the criteria for review articulated in the State's plan are not met in a particular case in which review has been requested, the State may decline to conduct the review.

6. Comment: The majority of commenters recommended that inconsistency with the guidelines be adequate grounds for adjustments, regardless of whether the order was established under the guidelines, unless the inconsistency is considered negligible under the State's procedures. The commenters argued that the award amount indicated by the guidelines is rebuttable, thereby permitting an opportunity to present additional information that may have been taken into consideration in setting the original award amount.

Response: Section 466(a)(10)(A) of the Act requires that orders be adjusted, as appropriate, according to the State's guidelines. This rule applies regardless of whether or not the original order was established under the State's guidelines. Section 467 of the Act and regulations published on May 15, 1991, at 45 CFR 302.56 require guidelines to be used as a rebuttable presumption in setting all child support awards. We agree that information applied in setting the original order and still relevant may be presented during the review to rebut the amount of support indicated by the guidelines.

Because of the discretion given to the States during the first three years of review and adjustment, we are not mandating that inconsistency with the guidelines be adequate grounds for adjustment between 1990 and 1993. Many State laws require proof of a substantial change in circumstances before adjusting an order and inconsistency with the guidelines would not currently meet that test. States are encouraged to adopt quantitative standards (percentage and/or fixed dollar amounts or both) to determine whether an inconsistency is sufficient to justify an adjustment.

7. Comment: One commenter stated that no guidance is given as to whether and under what circumstances the IV–D agency has an affirmative duty to request a review. The commenter suggested that regulations could further define IV–D agency responsibilities by directing that the IV–D agency request reviews in all cases in which (a) the support rights have been assigned to the State; (b) the IV–D agency determines that the present award is lower than the amount likely to be ordered under the State's guidelines and the difference is not negligible; and (c) the agency determines that said review would be in the best interests of the child.

Response: While we have not specified in this final rule governing 1990–1993 requirements under what circumstances the IV–D agency has an affirmative duty to request a review, we strongly encourage States to include the commenter's suggestions in their plan for review and adjustment. Affirmative, aggressive action during the period prior to October 1993, will ensure an easier transition to the more stringent requirements that become effective at that time.

8. Comment: Several commenters asked how a State documents a review when automatic matches with appropriate databases indicate that modification should not currently be pursued. Another commenter asked whether computer matching of IV–D cases against wage reporting systems, public assistance records, unemployment insurance rolls, etc., constitute a review assuming neither parent requests a review. Another commenter asked how a review is defined when the State initiates an evaluation of cases by applying certain criteria to computer-generated case listings and matches these against other databases. Several commenters questioned whether notices need to be sent to parties where pre-screening indicates that no modification would be warranted under the State's guidelines.

Response: There is no requirement for pre-screening or pre-review, but States may place pre-screening procedures in their plans for review and adjustment. These pre-screening procedures may identify cases with low potential for adjustment. A State's plan between 1990 and 1993 establishes under what circumstances a review will be conducted. A State is not required to review orders absent a request for a review by a parent or IV–D agency between 1990 and 1993 unless its plan requires it to do so.

Some States, however, are reviewing cases whether or not there is a request. This is especially worthwhile in AFDC cases given the requirement for review of most orders in AFDC cases which is effective October 13, 1993. However, regardless of the basis for review, States should not rely solely on computer matching to conduct a review as it may not ensure up-to-date, complete and accurate information necessary to apply the State's guidelines. In conducting a review, it may be necessary to obtain information from the parties, in addition to use of the automated resources.

Oregon, in its final report on the review and adjustment demonstration project, determined that disposition of cases using their Partial Automated Review (PAR) procedure often took longer and was more labor intensive. Experience showed that the new award amounts computed by PAR after accessing automated data sources were frequently based on incomplete data as to earnings or allowable deductions. Accordingly, the parents usually submitted additional information so that a new calculation had to be performed. Moreover, the preliminary results obtained under PAR created false expectations in many situations, with the consequence that staff time was consumed in responding to parents' complaints when the final result was lower or higher than expected.

It is important to recognize the distinction between review and "pre-screening". Pre-screening of cases against automated records in accordance with the State's review and adjustment plan to determine whether a case qualifies for a review is appropriate. However, pre-screening does not meet the definition of a review as specified in § 303.8(a)(3). Therefore, a complete review must be conducted if a case meets the conditions for review under a State's review and adjustment plan. Otherwise, the specification in the statute that a review will produce a determination that an order should be adjusted or that no change is necessary would not be met. The advance notice is only required if a review is to be conducted.

9. Comment: Some commenters had concerns about the use of pro se

processes. One commenter recommended that we clearly state in regulations that a State is not required to review and adjust an order if the parties elect to proceed on their own, either pro se or with a private attorney. Another commenter asked whether the requesting party can proceed with a pro se action without the IV–D agency being involved. Commenters questioned whether the agency can recommend use of a pro se process if the case does not meet the criteria for modification but a parent insists it take place.

Response: Establishing pro se processes for seeking adjustments to orders simplifies the process and ensures access to reviews for anyone who may seek an adjustment. If a party elects to proceed on their own behalf, either pro se or through private counsel, the State is not required to review the order or seek an adjustment. Pro se kits can be offered when a request for review and adjustment does not meet the State's criteria for review under its review and adjustment plan. At least one State which utilizes an administrative review and adjustment process has a pro se "do it yourself" kit for court adjustment of orders. This kit is provided to requestors in cases which the IV–D agency has deemed through a preliminary review do not meet the criteria for review under the State's plan. In addition, the kit is provided to: (1) Requestors who the agency deemed do not qualify for a review, (2) those who meet the agency criteria but prefer court review, (3) those whose change in income is the reason for the request, but recomputation using the guidelines does not meet the required minimum threshold for adjustment, (4) those requestors who claim a special circumstance requiring court determination, and (5) those cases in which the agency finding is disputed and cannot be resolved through supervisory review. The State's forum for pro se adjustment can be judicial, administrative or a combination of the two.

Advance Notice of Review—Section 303.8(b)(2)(iii)

1. Comment: Numerous commenters indicated confusion as to who is entitled to an advance notice of review. One commenter suggested having different types of notices required when one party to a case requests a review as compared to when the State initiates a review. Another commenter recommended that each parent be notified of a review.

Response: The State must notify each parent of a review regardless of whether one or both of the parties requested the review or the State initiated the review. One form of notice can be used whether a parent, both parents, or the State makes the request for review.

2. Comment: One commenter asked if the purpose of the 30-day advance notice is to advise the parties that a review which could result in modification with be conducted; or to advise the parties that a completed review indicates a modification is appropriate. In addition, this commenter also wanted to know if this means that the review cannot be conducted until the 30-day period expires.

Response: The purpose of the 30-day advance notice required under § 303.8(b)(2)(iii) is to advise the parties that a review will be conducted and to give them an opportunity to submit pertinent information. Generally, as required by the statute, the review cannot be conducted until the 30 days expire. However, the parties may jointly agree to waive this 30 day requirement. Following a review, another notice is required under § 303.8(b)(2)(v) advising each parent of any adjustment or determination that there should be no change in the child support award amount and of each parent's right to initiate proceedings to challenge the adjustment or determination within at least 30 calendar days after the date of the notice.

3. Comment: There were several comments on notifying parents of the likely outcome of the review in the advance notice. One commenter requested the parents be notified in the advance notice of review of: (1) The amount of the proposed adjustment, (2) a date by which a party must note an objection, (3) the date and time of the proceeding and (4) the adjustment or determination that there should be no change.

Response: Because the review has not taken place, the advance notice of review required under § 303.8(b)(2)(iii) should not include the amount of the proposed adjustment or date by which a party must note an objection. (See earlier discussion about the results of the Oregon demonstration project's Partial Automated Review and notice to parents.) The notice should include details about when and where the review will take place, as well as any necessary information the parties must provide the State. The proposed adjustment or determination that there should be no change in the order and date by which objections can be made are specified in the notice to the parties required under § 303.8(b)(2)(v) which is provided after the review is completed.

4. Comment: Several commenters inquired about providing advance notice and subsequent reviews of support orders to parents who had not been located. They asked whether the State can forward the notice to the last address of record.

Response: Generally, notices cannot be sent to individuals whom the State is unable to locate. However, if permitted by State due process requirements, notices by publication or by mailing to the last known address of record may be used. If a party to an order cannot be located, the State may be unable to secure information necessary to conduct the review. If the State cannot proceed with the review because of inadequate information, the case file should be documented and no review would be required until location efforts required under § 303.3 are successful.

5. Comment: Several commenters asked for clarification about whether the requirement to notify parties of a proposed review is satisfied by sending the parties copies of a legal pleading such as a complaint or petition to modify or an administrative notice of review.

Response: Sending the parties copies of the complaint or petition to adjust the order will satisfy the requirement to provide advance notice of a review if the copies are sent 30 days before the complaint or petition is heard.

6. Comment: One commenter asked us to remove the requirement to wait 30 days before initiating the review after sending the advance notice so that the review could be commenced immediately upon selection of the case.

Response: The 30-day advance notice is mandated by statute and cannot be deleted. In addition, 30 days allows adequate time to gather information necessary to conduct the review. However, as indicated previously, parties may jointly stipulate to a waiver of the 30 day requirement.

7. Comment: There was an inquiry as to whether the notice requirement applies in AFDC and foster care cases.

Response: Section 303.8(b)(2)(iii) requires States to send advance notice to "notify each parent subject to a child support order in effect in the State of any review of the order at least 30 calendar days before commencement of the review" in *any* IV–D case in which an order is to be reviewed.

Requiring Parents to Provide Necessary Information

1. Comment: Several commenters recommended that we require that support orders require parties to the order to provide information necessary

to conduct a review. Another commenter felt it is unreasonable to assume tat either party will provide the necessary information. There were questions concerning safeguarding of shared information.

Response: A State may require in its advance notice that each party provide specified information necessary to conduct the review. States are also permitted and encouraged to make the provision of information a requirement in the support order. States must make every effort to obtain and use information necessary to apply the State's guidelines. States should attempt to secure the necessary information by accessing employment security or other records rather than relying totally on the parties to provide the information. With respect to concerns about safeguarding of shared information under § 303.21(a)(1), the use or disclosure of information concerning applicants or recipients of support enforcement services is limited to the purposes directly connected with the administration of the plan or program for Child Support Enforcement and AFDC programs, among others.

2. *Comment:* One commenter asked us to clarify that requests for information to accomplish the review be sent at the same time as the notice of review.

Response: We encourage the States to request specific information needed to accomplish the review in the advance notice of review.

3. *Comment:* A number of commenters raised concerns about financial information. One commenter asked that we define the income verification process, whether the parents can be provided with court-approved financial affidavits and if wage reporting information can be required to be verified with the payor prior to review. One commenter asked whether sending financial statements is sufficient advance notice of a review. In addition, they asked whether a review may commence if all documentation is received before the 30-day period expires.

Response: The State may send financial statements to be completed by parties as part of the advance notice of review. However, the parties must be notified that a review will take place 30 days following the notice. With respect to starting the review as soon as all information is received, section 466(a)(10)(C)(i) of the Act requires States to notify the parties 30 days before commencing the review. Therefore, the State must wait the full 30 days before starting the review unless the parties jointly agree to waive the requirement. The necessity and extent of income verification is determined according to State standards and guidelines.

4. *Comment:* A commenter asked us to require States to adopt laws granting IV–D agencies administrative subpoena power.

Response: We are not requiring States to enact such laws in this rule because of the flexibility given States by the Congress to develop processes for review and adjustment over the 1990–1993 period. However, we encourage them to do so as a means of improving their ability to obtain information. One of the demonstration States, Illinois, found legislation enacted giving subpoena power to the administrative agency to be very beneficial. The Illinois IV–D agency reports that the information gained from employers is useful not only in assessing the financial status of the responsible relative, but also in updating addresses and locating the absent parent. The use of administrative subpoena power has reduced delays in the filing of motions as the legal representatives do not have to wait for additional evidence to support their findings. In Colorado, another demonstration State, the IV–D agency issues administrative subpoenas to any obligor who fails to return an affidavit for child support issued with the initial notice. The administrative subpoenas require the non-responding parties to bring the requested financial information to an adjustment hearing at the IV–D office. Obligors who fail to respond to the administrative subpoena may be served with a motion to compel, which requires a court appearance. Because information on the financial situation of both parents is necessary for application of Colorado guidelines, administrative subpoenas may also be served upon non-AFDC obligees who fail to return affidavits.

Post-Review Notice of Results and Right to Challenge—Section 303.8(b)(2)(v)

1. *Comment:* One commenter felt 30 days to challenge the adjustment or determination that there should be no adjustment is an unnecessary and time consuming step. Another commenter recommended allowing 30 days to appeal the decision.

Response: This requirement is mandated by section 466(a)(10)(C) of the Act. States are required to notify each parent "of a proposed adjustment (or determination that there should be no change) in the child support award amount and (that) such parent is afforded not less than 30 days after such notification to initiate proceedings to challenge such adjustment (or determination)."

2. *Comment:* One commenter asked if the notice of results of the review could be an order of a referee, a recommendation of a mediator, or an administrative finding subject to judicial review, rather than a letter without legal impact.

Response: Any of these alternatives are acceptable, if they are acceptable under the State's law and procedures.

3. *Comment:* One commenter inquired how the post-review notice requirement relates to the right to appeal when review is conducted in a judicial setting. The commenter felt that the proposed regulation was written in such a way that the court notification cannot substitute for IV–D notice as the court will not "propose" a modification.

Response: The post-review notice is to inform each parent of the result of the review and the right of each parent to challenge the adjustment or determination, not to adjust by initiating proceedings within at least 30 calendar days after the notice. In jurisdictions that permit "de novo" review in these instances, the parties may present additional information at the hearing or appeal. The post-review requirement can be met by States with traditional judicial processes as long as any party to the order has not less than 30 days to challenge the determination. Since we believe appeal of a decision meets the intent of Congress, § 303.8(b)(2)(v) refers to any adjustment to the order. Our change is to minimize any duplication of, or delay in, the process as long as an individual's due process rights are protected.

4. *Comment:* One commenter suggested the challenge occur within the modification process to eliminate some of the duplicate notices, waiting periods, and guessing about what the court will do.

Response: While objections can be raised and supporting evidence offered during the process, a challenge to the finding by the decisionmaker cannot be raised until the results are reported to the parents. Upon notice of the results, either or both parents may decide to challenge the results.

5. *Comment:* A commenter asked if the regulations need to specify whether the challenge to the review is to be heard through an administrative or judicial process or whether it is up to the State.

Response: States have discretion and authority to designate the appropriate forum for hearing challenges to adjustments or determinations that there be no adjustment to the order.

Miscellaneous Questions on the Audit and Interstate Process

1. Comment: One commenter asked whether a State would be subject to an audit exception if, following the criteria in the State's plan for review and adjustment, the State rejects a frivolous request for review.

Response: The State would not be subject to an audit exception if it follows its plan's criteria for review and adjustment of orders.

2. Comment: One commenter asked how States will be audited against the 1990 review and adjustment requirements.

Response: The States will be audited to determine if they are in substantial compliance with requirements for review and adjustment or orders effective October 13, 1990, in accordance with the requirements of § 303.8, and the State's plan for review and adjustment established in accordance with § 303.8.

3. Comment: Numerous comments were made regarding the need for explicit guidance and requirements governing interstate processing of review and adjustment requests.

Response: Because of the complexities of interstate review and adjustment and State flexibility with respect to review and adjustment between 1990 and 1993, we are allowing States to determine how best to perform review and adjustment in interstate cases for those three years but will address specific interstate case processing requirements beginning October 13, 1993, under separate rule.

Between October 13, 1990 and October 12, 1993, the States must have established State plans for review and adjustment and implement and follow those plans. Interstate cases must be processed according to the requirements of § 303.7. If an initiating State sends a request for review and adjustment to the responding State, the responding State must decide if the review is appropriate in accordance with its plan for review and must adjust the order if appropriate and permitted under its State law.

III. Immediate Income Withholding

Section 303.100—Wage or Income Withholding

General Withholding Requirements

1. Comment: One commenter asked that we clarify that the wage withholding requirements apply to spousal support when such support is included in the child support order being enforced by the State.

Response: Spousal support must be withheld in cases where such support is included in the child support order being enforced under the title IV-D State plan.

2. Comment: Section 303.100(a)(2) requires that, in addition to the amount withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support. A commenter claimed that this requirement will pose problems for States because of requirements for presumptive guidelines at 45 CFR 302.56. The commenter was concerned that judges may be encouraged to determine the amount of the obligation according to the guidelines, but then allocate a portion of that amount to be applied to overdue support, thereby reducing the amount available for current support.

Response: Neither the wage withholding requirements of this section nor the presumptive guidelines requirements at 45 CFR 302.56 support this interpretation. Guidelines are used to determine the underlying obligation, not the payment schedule. The total amount to be withheld to satisfy current and overdue support is subject to limitations contained in paragraph (a)(3) regarding maximum amounts allowed under the Consumer Credit Protection Act (CCPA). In any case, amounts withheld must be used first to satisfy current support, and any additional amounts applied to satisfy arrearages. The presumptive guidelines should not be used as either a basis or a limit for determining the amount to be withheld to satisfy arrearages.

3. Comment: One commenter asked that we define overdue support for purposes of wage withholding. This commenter was concerned that in some paternity cases the initial support award contains, in addition to current support, a support debt for a prior period, and should not be considered arrearages for purposes of wage withholding.

Response: Section 301.1 defines overdue support as a delinquency pursuant to an obligation determined under a court order or established under State law. A support debt created for a prior period in an initial support order entered prior to November 1, 1990, would not meet the conditions established in § 303.100(c)(1) as an arrearage qualifying for triggering initiated withholding, since this amount would not reflect payments which the absent parent failed to make under a support order, i.e., payments which accrued pursuant to a support order and which were not paid timely. In cases of immediate withholding under § 303.100(b), an amount applied to reduce this debt may be included in the total amount to be withheld. However, the existence of such a support debt would not preclude the obligor from meeting the requirements for good cause or an alternative arrangement under paragraphs (b)(1)(i) and (ii) if the order requires an amount to be paid periodically toward liquidation of the debt.

4. Comment: One commenter asked that paragraph (a)(3), limiting withheld amounts to the limits imposed by the CCPA, be cross-referenced with paragraph (a)(9) allowing States to extend withholding to income other than wages.

Response: We did not revise paragraph (a)(9) as requested because the CCPA limits under 15 U.S.C. 1673(b) apply only to periodic payment of compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension or retirement program, and including payments under title II of the Social Security Act for disability, since those payments are based on coverage earned through wages or salaries. Some States may extend withholding to other forms of income (State lottery winnings, dividend payments, etc.) which do not fall within the CCPA definition of compensation for personal services and would therefore not be subject to the CCPA limits.

5. Comment: A commenter asked that we clarify the requirement in paragraph (a)(4) that withholding must occur without the need for any amendment to the order involved or any other action by the court or entity that issued it, since provisions under this section may require hearings or findings of fact at paragraph (e) or where a State requires the court or administrative entity to reverse a good cause finding.

Response: We agree, and have added the phrase "other than that required or permitted under this section" to the end of paragraph (4). For example, a return to court may be appropriate or necessary to reverse a good cause finding, cancel an alternative arrangement, or implement withholding upon the custodial parent's request if the triggering arrearage has not been met. In cases of triggered withholding, returning to court to amend the underlying support order to provide for withholding is explicitly prohibited. As we stated previously in response to comments in the final rule on implementation of the Child Support Amendments of 1984 (50 FR 19623), the requirement at 466(b)(2) of the Act does not rule out a judge signing a withholding order, if this process does not involve a hearing or a court appearance.

6. *Comment:* A number of commenters responded to the proposed change in paragraph (a)(5), that, in cases where there is more than one notice for withholding, the State must allocate amounts available, but in no case shall allocation result in withholding not being implemented for one of the families. Several commenters felt that the proposed change was not specific enough and that it would not remedy the problem of unequal or unfair allocations adequately. A commenter pointed out that a State could satisfy this requirement by allocating a token amount (one dollar) in withholding for one of the families involved. Some commenters wanted the language to require the court or administrative authority which issued the support order(s) to allocate amounts, not the IV-D agency. Other commenters felt that any change to the former requirement, which allowed States to allocate according to their own criteria, would further complicate an allocation process already misunderstood by many families. Some commenters felt that allocation was an insurmountable problem at this time and should not be regulated until further study. Finally, one commenter insisted that this allocation policy could result, in situations where an absent parent has two obligations only one of which is for current support, in the family with the order for current support receiving the entire allocation and the other family none.

Response: We believe that the clarification in paragraph (a)(5), which will ensure that allocation will result in each family benefiting from withholding, reasonably addresses the problem. We do not agree this clarification complicates allocation or that a State would allocate a token amount to a family. We agree that, in giving current support a priority, in some cases an allocation by the IV-D agency will result in withholding not being implemented for the family which is owed arrearages only. However, other enforcement tools such as Federal and State income tax refund offset are available.

7. *Comment:* Many commenters strongly objected to the proposed language in paragraph (a)(7)(ii) that withholding could be terminated when the absent parent requests termination, withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement. Many commenters felt that withholding should only be terminated according to paragraph (a)(7)(i), i.e., when there is no longer a current order for support and all arrearages have been satisfied. Several commenters also felt that allowing termination for any other reason would be contrary to the intent of Congress in establishing immediate withholding. Other commenters objected to allowing the absent parent to request termination, noting that terminating withholding would never be consistent with the best interests of the child. Several commenters claimed that termination procedures would be administratively burdensome, requiring costly staff time to deal with requests and additional staff time to re-apply withholding when arrearages subsequently occurred. Other commenters claimed that States had in many cases already restricted termination based on assurances by Congress that immediate and constant wage withholding are the best way to assure payments and protect the well being of children. Some commenters expressed their concern that, if a subsequent alternative arrangement is allowed, some absent parents would subject custodial parents to undue pressure. One commenter pointed out that in its State 50 percent of all collections are through wage withholding and that 75 percent of all obligors eventually accrue arrearages. Another commenter felt that if the custodial and absent parents wanted termination after implementation of withholding, the IV-D case should be closed. One commenter asked that a good cause finding be added to the criteria for termination.

Response: In response to these comments, we have provided that States who believe that termination of immediate withholding should be restricted have the authority to do so. Paragraph (a)(7)(i) now requires that, for all cases, the State must have procedures for promptly terminating withholding when there is no longer a current order for support and all arrearages have been satisfied. States who wish to afford the absent parent the added opportunity to request termination at an earlier date have the option at paragraph (a)(7)(ii) to provide for this if withholding has not been terminated previously and subsequently initiated and the absent parent meets the conditions for an alternate arrangement set forth under paragraph (b)(3). We agree that States who expressed concerns regarding the termination of withholding, the subsequent occurrence of future delinquencies, and the unavoidable administrative burden if arrearages again occur, should have the authority to limit termination, if they so choose.

8. *Comment:* Several commenters objected to the requirement at paragraph (a)(8) that the State have procedures for promptly refunding to absent parents amounts which have been improperly withheld. One commenter asked that we make clear that this referred only to withheld amounts retained by the State, since if it were otherwise, the State would have to recoup the overpayment from the custodial parent. Another commenter asked that this "new" requirement be deleted, since if withheld amounts have been passed on to the custodial parent, the absent parent should pursue reimbursement from the custodial parent. This commenter felt it would be administratively burdensome to the State and the absent parent should use remedies under State law. Another commenter suggested that it would be administratively simpler to allow the IV-D agency to credit the absent parent's account.

Response: This is not a new requirement; it is a restatement of former paragraph (a)(10). This provision does not refer only to withheld amounts retained by the State. Any amounts improperly withheld, even if they have been sent to the custodial parent, must be promptly refunded by the State to the absent parent. Subsequent to the refund, the State may attempt to recover any amounts sent to the custodial parent. Federal funding is not available under 45 CFR 304.20 for these refunds. OMB Circular A-87 precludes Federal funding for "any loss arising from uncollectible accounts and other claims and related costs." However, this does not preclude the State from negotiating directly with the absent parent under State law to apply the refund to other arrearages or future support.

Immediate Withholding

1. *Comment:* Several commenters objected to the provisions establishing exceptions to immediate withholding which were set forth in paragraphs (b)(1) and (2). These commenters felt that the provisions for good cause and for alternative arrangements would not meet the goal of immediate withholding for all cases and would be administratively burdensome to States.

Response: The provisions for good cause and alternative arrangements are mandated by the statute at section 466(b)(3)(A) of the Act. However, as stated in the preamble to the proposed rule, we are aware that some States have laws and procedures which do not allow exceptions to immediate withholding for good cause and/or alternative arrangements. States have

the option of applying for an exemption from these provisions in accordance with regulations at 45 CFR 302.70(d) and program instructions at OCSE-AT-88-12 dated December 12, 1988 if they can demonstrate that the enactment of these requirements would not increase the effectiveness and efficiency of the State Child Support Enforcement Program.

2. *Comment:* A number of commenters responded to our solicitation of comments on whether the establishment of escrow accounts should be included as conditions for good cause and/or alternative arrangements. Most favored requiring escrow accounts in the amount equal to the support payable for two months as a condition for both a finding of good cause and for an alternative arrangement. One commenter urged that the escrow account be for an amount equal to one year's support. Another commenter recommended either an escrow account or a form of electronic funds transfer as an alternative requirement. Several commenters stated that such a requirement would ensure that the family would continue to receive support upon a default in payment. One commenter suggested that escrow accounts be allowed as an option.

Response: Although many commenters advocated requiring escrow accounts in an amount equal to the support payable for two months as a condition for both a finding of good cause and an alternative arrangement, we have not mandated escrow accounts because there is no evidence of the need for Federal regulation in this regard. Federal regulations at 45 CFR 303.103 already require States to have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure support in appropriate cases. Certainly, States who believe this to be a valuable tool may require an escrow account as a means to ensure that funds are available should the obligor become delinquent.

3. *Comment:* One commenter pointed out that the proposed requirements that the absent parent agree to keep the IV-D agency apprised of his or her current employer and information on any employment related health insurance coverage at paragraphs (b)(2)(iii) and (b)(3) for good cause and alternative arrangements, respectively, were duplicative of the requirement at paragraph (a)(10) for all withholding orders.

Response: We agree, and have eliminated these provisions from paragraphs (b)(2) and (3).

4. *Comment:* One commenter asked if the conditions for reaching a determination of good cause contained in paragraphs (b)(2)(i), and (ii) must both be met, or if the phrase "at least" meant that meeting one of the conditions was sufficient for a finding of good cause.

Response: Both remaining conditions must be met as the minimum criteria for a finding of good cause.

5. *Comment:* One commenter recommended that there would be other reasons for allowing good cause beyond the best interest of the child, such as extraordinary hardship on the obligor.

Response: The provisions of paragraph (b)(2) are minimum requirements, and States may establish criteria in addition to those set forth in this rule. However, we do not believe that an automatic withholding of support from an obligor's wages should constitute an extraordinary hardship.

6. *Comment:* Several commenters claimed that the establishment of a definition for good cause was an abuse of regulatory authority and that alternatively, courts should be required to provide written justifications of their good cause findings.

Response: Although the statute did not define good cause, we have used our authority under section 1102 of the Act to set these requirements because we believe that Congress intended that immediate withholding would be implemented in most cases.

7. *Comment:* We received many comments in response to our solicitation of views regarding whether the State should be a required party, rather than a party at State option, to any alternative arrangement between the absent and custodial parents in an IV-D case in which there is an assignment of support rights to the State. Several commenters felt that the State should be a required party in all IV-D cases, not just those in which support rights have been assigned. These commenters were concerned that it would be unlikely for any alternate arrangement to be in the best interest of a child and that State oversight was needed. One commenter favored the State being a required party in all cases because of the administrative burden caused by subsequent delinquencies. Another commenter asked that the States not be precluded from being a required party to an alternate agreement in any IV-D case because there should be no distinction between cases with assigned support and those without. Some commenters recommended that the State be a required party only in AFDC cases where both the State and the Federal governments had a vested interest in securing support for those in need of public assistance. A number of commenters favored the language in the proposed rule, allowing the State to be a required party to any alternate arrangement at State option in cases in which there is an assignment of support rights. One commenter asked if the phrase "at State option" meant that the option would allow individual county jurisdictions within the State to exercise or not to exercise the option.

Response: The final rule retains the language in the proposed rule allowing States the option of requiring the State to be a party to a written alternate arrangement in cases in which there is an assignment of support rights to the State. Since opinions on this issue varied so greatly, we believe that States should be allowed the flexibility to choose the best approach. Any State which believes it is essential for the State to be a party in any case involving assigned support may so require under this option. If a State chooses to exercise this option, it may establish procedures which allow local jurisdictions discretion for State involvement based on the circumstances of the case.

8. *Comment:* Several commenters asked for clarification of the requirement that the written agreement be reviewed and entered by the court or administrative authority. Several commenters wanted the final rule to explicitly require that the court have the authority to approve the written agreement and not to enter agreements found to be inappropriate. Other commenters were concerned that the court or administrative authority could substitute its judgment for that of the parties if the review included approval authority. These commenters urged that the final rule specify that the court or administrative authority could not disapprove alternative agreements.

Response: The statute at section 466(b)(3)(A) clearly requires the court or administrative authority to determine whether good cause not to implement withholding exists. The statute does not create a similar role for the court or administrative authority with respect to written agreements for alternative arrangements. We have used our regulatory authority only to require the court or administrative authority in these cases to review and enter such agreements in the record.

Initiated Wage Withholding

1. *Comment:* One commenter requested that the definition of payments which the absent parent has failed to make at paragraph (c)(1) be based on the absent parent's established payment schedule (i.e., weekly, biweekly or monthly payments). This commenter reasoned that withholding

should be initiated if the absent parent missed any one payment.

Response: Section 466(b)(3)(B) of the Act requires that, in cases not subject to immediate withholding, the wages of an absent parent shall become subject to withholding on the date on which payments which the absent parent has failed to make are at least equal to the support payable for one month. The requirement is based on the amount which is owed, not when it is due. However, the statute at section 466(b)(3)(B)(iii) allows States to establish an earlier triggering date if they so choose.

2. *Comment:* Another commenter asked that the regulations should make provisions for potential changes in States' laws which may allow violations of visitation agreements to trigger withholding.

Response: Matters pertaining to visitation and custody are separate from support and should not be used to trigger withholding. Withholding should not be used as a punitive measure, particularly for reasons which do not relate to child support.

3. *Comment:* We received many comments regarding paragraph (c)(1)(ii) which requires that, in cases not subject to immediate withholding, withholding be implemented on the date the custodial parent requests that withholding begin, if the State determines, under such procedures and standards as it may establish, the request should be approved. Several commenters stated that the custodial parent should not be allowed to request withholding if the absent parent had not accrued a qualifying arrearage. One commenter stated that such a provision was inconsistent with the requirements for advance notice to the absent parent when arrearages occur. Another commenter claimed that this provision could be used by the custodial parent to harass the absent parent. One commenter questioned why a State would implement withholding if the case is not before the court for modification or there is no arrearage. Another commenter felt that this provision would add to the enforcement tools available under title IV–D and would provide a bridge between the former withholding requirements and those mandated through immediate withholding for those cases which have support orders entered before November 1, 1990. This commenter recommended that the provision be further strengthened by specifying that, for cases in which support rights had been assigned to the State, the State may request that withholding be implemented.

Response: Section 466(b)(3)(B)(ii) of the Act explicitly requires withholding to be triggered, without regard to whether there is an arrearage, on the date the custodial parent requests it, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved. Therefore, States must establish procedures which specify the circumstances in which a custodial parent request for withholding will be granted in cases not subject to immediate withholding and in which the 30 day triggering arrearage has not been met. If the State determines that withholding will be implemented under those procedures, the absent parent must be given advance notice of the withholding in accordance with paragraphs (c)(2) and (d)(1). Moreover, the procedures and standards adopted by the State for approving the custodial parent's request should prevent harassment.

In establishing its procedures, a State should consider whether it is appropriate to require further action by the court for cases in which there has been a determination of good cause not to implement immediate wage withholding, an alternative arrangement exists or an order was established or modified prior to November 1, 1990. For example, a State could opt to remove the good cause determination or negate an alternative arrangement before withholding is initiated. Although we encourage States to adopt simple administrative procedures to ensure the timely initiation of custodial parent requests, we believe that States should also ensure that their procedures extend appropriate protections to the non-custodial parent as well.

Advance Notice to the Absent Parent in Initiated Withholding

1. *Comment:* The majority of commenters were concerned that the requirement that the State send the advance notice to the absent parent within 5 working days of the appropriate date under paragraph (c)(1) was unrealistic. Several commenters suggested that a 15 working day timeframe was more feasible, while other commenters were in favor of 10 working days. Another commenter stated that the 5 day timeframe could only be met when all State support enforcement programs are fully automated. One commenter felt that establishing any timeframe for this requirement violated the statutory mandate which provides that the wages of an absent parent become subject to withholding on the appropriate date identified in paragraph (c)(1). A commenter also pointed out that advance notice to the absent parent was not necessary in cases where the absent parent had requested withholding.

Response: We agree that the proposed 5 working day timeframe was too stringent. Consequently, we have changed the timeframe for sending the notice of withholding to the absent parent to within 15 calendar days of the appropriate date in paragraph (c)(1) which requires initiated withholding under certain conditions in cases where the wages of an absent parent are not subject to immediate withholding. Although the statute requires that the wages of an absent parent become subject to withholding on the date identified in paragraph (c)(1), we realize that it is unrealistic to expect that the notice be sent on that date, although it is clear that the State must have in effect procedures which identify the date when an action takes place which triggers withholding.

The former regulations for withholding at § 303.100(a)(4) addressed this issue by requiring that the State take steps to implement withholding on the appropriate date. We believe that the most realistic approach to ensuring that timely action takes place is to establish measurable timeframes for this requirement. The revised requirements at section 466(b) of the Act eliminated the requirement that advance notice be sent to the absent parent on the day wages become subject to withholding. Because Congress deleted this requirement, it is reasonable to allow States time to send the notice. Moreover, the 15 calendar day timeframe parallels several other requirements under regulations for program standards in 45 CFR part 303.

Finally, we agree with the comment that it is unnecessary for the advance notice to be sent to the absent parent when the absent parent has requested that withholding be implemented. Moreover, we would point out that notice of withholding is not required in cases subject to immediate withholding or in interstate cases in which the absent parent has previously received notice of withholding.

2. *Comment:* One commenter asked if the requirement at proposed paragraph (c)(2), that the State must send advance notice to the absent parent within 5 working days of the appropriate date under paragraph (c)(1) if the absent parent's address is known or, if not known, within 5 days of location referred to obtaining an address or verifying that the absent parent is at the location.

Response: The extent and specifics of verification procedures are left to the States. The State must ensure the absent parent's due process rights under State law are protected.

3. *Comment:* A number of commenters were concerned that the requirement at

proposed paragraph (c)(3), providing that in cases where there has been a finding of good cause, withholding not be implemented upon request of the custodial parent under paragraph (c)(1)(ii) until the finding had been reversed, was unauthorized by the statute. One commenter asked that the regulation should specify that the support order require that a good cause finding ceases only upon a qualifying delinquency. Another commenter claimed that reopening a good cause finding would result in a misuse of the State's resources.

Response: We have eliminated the specific regulatory provision that a good cause finding must be reversed before the custodial parent's request for withholding can be approved. We recognize that the statute provides both for a good cause exemption from immediate wage withholding and for custodial parents to initiate wage withholding by request without providing guidance on which provision takes precedence. However, the law does require that States must have in place procedures to review and approve, if appropriate under their procedures and standards, a custodial parent's request. Therefore, we believe that States are in the best position to determine the circumstances under which a custodial parent's request will be approved. We urge that States consider the issue of removal of good cause determination when they develop their review procedures, but will not require that it specifically be included in their procedures.

4. *Comment:* One commenter recommended that proposed paragraph (c)(4), providing that the only basis for contesting a withholding is a mistake of fact, be changed to require that if the amount of current or overdue support is at issue, the court should be required to modify the support order to reflect the correct amount of support or arrearages and issue the withholding notice rather than requiring an additional hearing on a claimed mistake of fact.

Response: This is a restatement of former language at § 303.100(a)(4). Section 466(b)(2) of the Act requires that withholding must occur without the need for any amendment to the support order involved or for any further action, other than those required under section 466, by the court or administrative authority which issued the support order. Any State law or procedure (other than to reverse a determination of good cause, cancel an alternative arrangement or implement withholding at the custodial parent's request) which requires a return to court in order to implement withholding is contrary to this requirement.

Procedures When the Absent Parent Contests Initiated Withholding

1. *Comment:* One commenter asked that the final regulation provide that the State procedures required at paragraph (e) when the absent parent contests initiated withholding include the right of the custodial parent to contest any claims.

Response: While we have not required such procedures to include the custodial parent's right to contest the claim, any procedure conducted pursuant to paragraph (e) with respect to a claim that there is a mistake of fact should provide an opportunity for all relevant evidence to be presented, including evidence from the custodial parent.

Notice to the Employer for Immediate and Initiated Withholding

1. *Comment:* One commenter asked if the provision at paragraph (f)(1)(ii), requiring the employer report to the State the date on which an amount was withheld, was intended to establish the date of collection for purposes of distribution or the initial date of receipt for meeting program standards timeframes.

Response: The date the wages were withheld establishes the date of collection for distribution purposes at 45 CFR 302.51; it is not used as the initial date of receipt in the State, which starts measurement of the timeframe within which support must be sent to the family under requirements at 45 CFR 302.32. Provisions at 45 CFR 302.51(a)(4) require that, with respect to payments made through wage or other income withholding and received by the IV–D agency on or after January 1, 1988, the date of collection for distribution purposes in all IV–D cases must be the date of withholding. If the employer fails to report the date of withholding, the IV–D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

2. *Comment:* One commenter recommended that the requirement at paragraph (f)(1)(ii) that the employer send amounts withheld to the State within 10 working days be changed to 30 calendar days. This commenter maintained that since the statute at section 466(b)(6)(B) requires that methods must be established by the State to simplify the withholding process, and employers find it simpler to send one monthly payment, the timeframe should be extended.

Response: The 10-day requirement has been in effect since May 18, 1985. We believe that to extend this timeframe would be inconsistent with Congressional intent that support collected be expeditiously distributed.

3. *Comment:* We received several comments objecting to the proposed requirement at paragraph (f)(1)(xi) that the notice to the employer must indicate that the absent parent is required under a support order to provide health insurance coverage. One commenter stated that such a requirement would involve both the IV–D agency and the employer in a meaningless task, since, if the obligor does not sign up for coverage, the employer has no authority to compel enrollment. Another commenter pointed out that the IV–D agency is required to enforce health insurance requirements in support orders. One commenter pointed out that the IV–D agency had no authority to require employers to take action based on the information provided and such information would not assist the employer in complying with the withholding order. Another commenter felt that the requirement needed strengthening and should be amended to require the employer to report quarterly the obligor's insurance company name, policy number and dependents covered.

Response: We agree that this proposed requirement will not assist in enforcing health insurance requirements and have deleted it from the final rule. However, States with such authority, including Minnesota, Washington and Iowa, may provide such language in their notice to the employer. In addition, States at their discretion may choose to require employers to provide quarterly reports of the obligor's insurance company's name, policy number and dependents covered. In addition, Oregon has already moved in this direction through a modification of quarterly employer reporting for employment security purposes.

4. *Comment:* A number of commenters objected to the requirement at proposed paragraph (f)(2) that in a case of immediate wage withholding the State must issue the notice to the employer within 5 working days of the effective date of the order, or of locating the absent parent. Some commenters argued that the 5 day requirement was not realistic in light of administrative factors beyond the IV–D agency's control. One commenter recommended a timeframe of 10 working days; another commenter recommended 15 working days; and another commenter favored 30 calendar days. Several commenters also pointed out that marking the timeframe from the effective date of the support order would be impossible in some instances since some orders are made effective retroactive to the date a petition for support is filed or the date a paternity action is instituted. These commenters recommended that the timeframe

commence from the date the order is entered. Another commenter suggested that the requirement be changed to within 5 working days of the receipt of the order by the IV–D agency.

Response: We have changed the timeframe in the final rule to 15 calendar days. This provides a more realistic approach and is consistent with other timeframes established in this rule and in regulations for program standards. We also agree with those commenters who pointed out the difficulty in complying with a timeframe which commences with an "effective" date and have changed the final rule to provide that notice to withhold be sent to the employer within 15 calendar days of the date the support order is entered.

Administration of Withholding

1. *Comment:* One commenter was concerned that the proposed requirement at paragraph (g)(2)(ii) that the State may designate only one entity to administer withholding in each jurisdiction will mean that every wage withholding action in every support order in the State will become a IV–D case. This commenter complained that this situation would result in increases in workloads and additional tax burdens on State and local taxpayers since there is no Federal financial participation in cases where an application for IV–D services has not been made. It was suggested that since Congress authorized a study regarding the impact of immediate withholding in non-IV–D cases, this proposed requirement should not be issued in final regulations until the results of the study are available.

Response: The requirement for only one wage withholding entity in each jurisdiction applies only to administration of withholding of IV–D cases and has been in effect since October 1, 1985. States have the option of establishing a separate mechanism for the administration of withholding for non-IV–D cases.

2. *Comment:* We received comments responding to the proposed requirement at paragraph (g)(3) that effective October 1, 1995, States must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State. One commenter stated that the requirement was premature and that the issue should not be regulated until procedures for transmitting support payments have been agreed upon by OCSE and the National Automated Clearing House Association (NACHA) and the process of transmitting payments has been tested. This commenter suggested that the proposed rule be withdrawn and that OCSE promulgate this requirement in 1995. Another commenter felt that this rule should appear instead in regulations for automated systems and that it include procedures for all collections, such as transfer of interstate payments and collections from county depositories to the State agency responsible for distribution.

Response: This provision was drafted in anticipation of the requirement that all States have operational automated child support enforcement systems by October 1, 1995. We believe that it is important that States have as much advance notice of this requirement as possible so that this capability can be included in the design of their automated systems. States are encouraged to extend this capability for all collections. We are currently pursuing a national initiative on this issue in cooperation with NACHA. The goal of this project is to develop a Child Support Convention, a set of procedures with a selected format to be used by employers to electronically transfer income withholding payments and standardized data elements which will contain case related information about the withholding. As part of developing these procedures we have contacted all State IV–D agencies for assistance, and will continue to involve the States in the ongoing developments.

Interstate Withholding

1. *Comment:* We received many comments regarding the proposed requirement at paragraph (h)(1) that States may register orders from other States only if it is for the sole purpose of establishing jurisdiction for enforcement of the order, does not confer jurisdiction for any other purpose, and does not delay withholding. Most commenters strongly supported this requirement, and several stated that support orders from their States had been registered by other States when interstate withholding had been requested and that the underlying order was subsequently modified downward in the responding jurisdiction.

Several commenters recommended strengthening the requirement. One commenter stated that the phrase "does not delay" would not assure compliance, since some States would claim that registration did not delay enforcement compared to their procedures for full URESA registration. Another commenter recommended that the final rule prohibit any registration whatsoever of the support order by the responding State. One commenter claimed that the proposed requirement was designed to allow a certain State to continue to register orders, with resulting delays, and suggested that any registration was not consistent with Congressional intent.

Finally, one commenter recommended that there be no restrictions on registration. This commenter argued that the better procedure is to allow the responding State to modify the order as necessary to enforce the other State's order through withholding. The commenter claimed that the proposed language clearly prefers administrative process for interstate wage withholding and that the limitations on registration were not feasible for judicial situations, since the absent parent may raise ability to pay defenses to enforcement. It was argued that this situation would necessitate a delay in enforcement of the order, including wage withholding and that such delay illustrates the futility of separating enforcement and adjustment authority. The commenter further maintained that the complexity of the subject requires careful coordination with ongoing efforts of the Commission on Interstate Child Support authorized under section 128 of Public Law 100–485, and the National Conference of Commissioners on Uniform State Laws (NCCUSL) which is redrafting URESA.

Response: We do not believe that an absolute prohibition on registration of orders for the purpose of wage withholding is feasible at this time due to the varied legal and administrative systems among the States. However, we do agree that the language can be strengthened regarding conditions under which registration is permitted, and have added language to specify that registration create no delay beyond the timeframes contained in paragraph (h)(5) regarding notice to the obligor, opportunity of the obligor to contest, and notice to the employer.

With respect to the comment recommending that there be no limits on registration, we strongly disagree. Registration of the underlying support order for the purpose of enforcement of a withholding notice may not open the underlying order to modification. Any State which allows such modifications is not in conformance with the requirements of section 466(b)(2) of the Act which provides that withholding must occur without the need for any amendment to the support order involved and section 466(b)(9) which provides that a State must extend its withholding system so that system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States.

Congressional intent on this issue has been clearly articulated since the adoption of Public Law 98–378 in 1984: "Withholding must occur without amendment of the order or further action by the court. The Committee

believes that this requirement is particularly crucial to the effectiveness of any income withholding provision, because it means that the custodial parent will not have to experience the costs and delays involved in returning to court to get a garnishment decree or a new support order." (Senate Report 98–387, page 27). In addition, the Model Interstate Income Withholding Act, published in 1984 by the American Bar Association and the National Conference of State Legislatures (under a contract from OCSE), explicitly provides that entry by the responding State of the initiating States's support order shall not confer jurisdiction on the courts or agencies of the responding State for any purpose other than income withholding. OCSE recently conducted a review of State law and practices on this issue, and has notified States identified as having problems in this area that any responding State's registration procedure which opens the underlying support order to modification or delays implementation of withholding is not in conformance with Federal requirements.

We agree with the need for ongoing coordination with the Interstate Commission and with the NCCUSL. In fact, the NCCUSL's Drafting Committee and the Interstate Commission's members have agreed to coordinate their efforts with respect to interstate child support enforcement. As referenced earlier, the work of both groups is scheduled for completion in 1992.

2. *Comment:* One commenter requested that the final rule clarify the requirements for notifying the obligor in interstate wage withholding proceedings.

Response: Under paragraph (h)(5)(i) notice must be given to the absent parent in accordance with paragraph (d), *if appropriate*, and under paragraph (h)(5)(ii), the absent parent must be given an opportunity to contest the withholding in accordance with paragraph (e), if appropriate. Notice would not be appropriate and, in fact, is not permitted, in immediate withholding in interstate cases, or in cases in which withholding was previously ordered as a result of a triggering arrearage.

3. *Comment:* Several commenters noted that the proposed requirement at paragraph (b)(3) providing that the initiating State must notify the responding State to implement wage withholding within 5 days of a determination that withholding is required was inconsistent with other regulatory requirements. These commenters pointed out that this conflicts with existing requirements at 45 CFR 303.7(b)(2) providing that the initiating State refer an interstate case for enforcement to the responding State's central registry within 20 calendar days of determining that the absent parent is in another State. Other commenters asked that the proposed requirement be changed to 30 calendar days.

Response: We agree that the proposed timeframe of 5 working days was inconsistent with existing requirements and have changed this timeframe in the final rule at paragraph (h)(3) to provide that the initiating State must notify the responding State to implement withholding within 20 calendar days of determining that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out the withholding. For consistency, we are also revising § 303.7(b)(2) to tie the 20 calendar day timeframe for referral of an interstate case to the receipt of any information necessary to process the case. An interstate request for withholding is, of course, not needed in cases where a State has long arm jurisdiction over the employer and can implement withholding directly.

4. *Comment:* We received comments objecting to the 5-day requirement at proposed paragraph (h)(5) for the responding State to send the notice of withholding to the employer, as unrealistic.

Response: We agree and have changed this timeframe to 15 calendar days in the final rule which is consistent with a number of other timeframes in this section.

Immediate Withholding in Non-IV–D Cases

1. *Comment:* A number of commenters complained that the requirements set forth in paragraph (i), for immediate withholding in non-IV–D cases, were premature since the requirement had a statutory effective date of January 1, 1994. Several commenters pointed out that, since section 101(c) of Public Law 100–485 required that OCSE conduct a study on making immediate withholding mandatory in all cases, final regulations should be postponed so that questions regarding the administrative feasibility and cost implications of such a requirement could be evaluated in light of the fact that no Federal financial participation was available for this activity. One commenter cited preliminary information on one project indicating that there were many complaints from private parties who objected to immediate withholding when a IV–D application had not been filed.

Response: We agree with commenters that it is premature to attempt to regulate this issue. Consequently, we have eliminated proposed paragraph (i) for immediate withholding in non-IV–D cases. As a result, new paragraph (i) requires that there be a provision for withholding in non-IV–D child support orders, to ensure that withholding as a means of support is available without the necessity of filing an application for IV–D services.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule implements specific requirements of Public Law 100–485 and will not result in additional costs to the States of $100 million or more. Any costs will be administrative, and we believe increased collections as a result of support order adjustments and immediate wage withholding will exceed increased administrative costs.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

List of Subjects

45 CFR Part 302

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.023, Child Support Enforcement Program)

Dated: September 3, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: January 16, 1992

Louis W. Sullivan,

Secretary

For the reasons set out in the preamble, 45 CFR chapter III is amended to read as follows:

1. The title of 45 CFR Chapter III is revised to read "Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services".

PART 302—STATE PLAN REQUIREMENTS

1a. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 302.54 is revised to read as follows:

§ 302.54 Notice of collection of assigned support.

(a) Until December 31, 1992, the State plan shall provide as follows:

(1) The IV–D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(2) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

(b) Effective January 1, 1993, the State plan shall provide that the State has in effect procedures for issuing notices of collections as follows:

(1) The IV–D agency must provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11 of this title, unless no collection is made in the month, the assignment is no longer in effect and there are no longer any assigned arrearages, or the conditions in paragraph (c) of this section are met.

(2) The monthly notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of current support, the amount of arrearages collected and the amount of support collected which was paid to the family.

(c)(1) The Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State:

(i) Until September 30, 1995, does not have an automated system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or

(ii) Uses a toll-free automated voice response system which provides the information required under paragraph (b)(2) of this section.

(2) A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) of this section and such notice must contain the information set forth in paragraph (b)(2) of this section.

3. Section 302.70 is amended by revising paragraph (a)(8); adding a new paragraph (a)(10); revising paragraph (d)(1) and the first sentence of (d)(2) to read as follows:

§ 302.70 [Amended]

(a) * * *

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing an application for services under § 302.33 of this part, in accordance with § 303.100(i) of this chapter;

* * * * *

(10) Effective October 13, 1990, procedures for the review and adjustment of child support orders, in accordance with the requirements of § 303.8 of this chapter.

* * * * *

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of paragraph (a) of this section by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of paragraph (a)(2) of this section, an exemption from any of the requirements of paragraph (a) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. * * *

* * * * *

PART 303—[AMENDED]

4. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

5. In § 303.4, paragraph (c) is revised to read as follows:

§ 303.4 Establishment of support obligations.

* * * * *

(c) Periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

* * * * *

6. In § 303.7, paragraph (b)(2) is revised to read as follows:

§ 303.7 Provision of services in interstate IV–D cases.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(1) of this section, within 20 calendar days of determining that the absent parent is in another State, and, if appropriate, receipt of any necessary information needed to process the case, refer any interstate IV–D case to the responding State's interstate central registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage withholding, and State income tax refund offset in IV–D cases.

* * * * *

7. A new § 303.8 is added to read as follows:

§ 303.8 Review and adjustment of child support orders.

(a) *Definitions.* For purposes of this section:

(1) *Adjustment* applies only to the child support provisions of the order, and means:

(i) An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(ii) Provision for the child's health care needs, through health insurance coverage or other means.

(2) *Parent* includes any custodial parent or non-custodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(3) *Review* means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(i) The appropriate support award amount; and

(ii) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(b) *Plan for review and adjustment.* (1) Effective on October 13, 1990, the State must have a written and publicly available plan indicating how and when child support orders in effect in the State will be periodically reviewed and adjusted.

(2) During the period from October 13, 1990 through October 12, 1993, the State must, for orders being enforced under this chapter:

(i) Determine whether such orders should be reviewed, using the plan

specified in paragraph (b)(1) of this section:

(ii) Initiate a review, in accordance with the plan, at the request of either parent subject to the order or of a IV–D agency;

(iii) Notify each parent subject to a child support order of any review of the order at least 30 calendar days before commencement of the review;

(iv) Adjust the order when the review determines that there should be a change in the child support award amount, or that health insurance should be required, as indicated by the review in accordance with the State's guidelines for support described in § 302.56 of this chapter.

(v) Following any review, notify each parent subject to a child support order in effect in the State, of:

(A) Any adjustment or a determination that there should be no change in the order; and

(B) Each parent's right to initiate proceedings to challenge the adjustment or determination, either through pre-decision review, appeal, or administrative review, within at least 30 calendar days after the date of the notice.

8. Section 303.100 is revised as follows:

§ 303.100 Procedures for wage or income withholding.

(a) *General withholding requirements.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it other than that required or permitted under this section.

(5) If there is more than one notice for withholding against a single absent parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(7) The State must have procedures for promptly terminating withholding:

(i) In all cases, when there is no longer a current order for support and all arrearages have been satisfied; or,

(ii) At State option, when the absent parent requests termination and withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3) of this section.

(8) The State must have procedures for promptly refunding to absent parents amounts which have been improperly withheld.

(9) The State may extend its withholding to include withholding from forms of income other than wages.

(10) Support orders issued or modified in IV–D cases must include a provision requiring the absent parent to keep the IV–D agency informed of the name and address of his or her current employer, whether the absent parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(b) *Immediate withholding on IV–D cases.* (1) In the case of a support order being enforced under this part that is issued or modified on or after November 1, 1990, the wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding under this paragraph in any case where:

(i) Either the absent or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding; or (ii) A written agreement is reached between the absent and custodial parent, and, at State option, the State in IV–D cases in which there is an assignment of support rights to the State, which provides for an alternative arrangement.

(2) For the purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least:

(i) A written determination that, and explanation by the court or administrative authority of why, implementing immediate wage withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

(3) For purposes of this paragraph, "written agreement" means a written alternative arrangement signed by both the custodial and absent parent, and, at State option, by the State in IV–D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority.

(c) *Initiated withholding in IV–D cases.* In the case of wages not subject to immediate withholding under paragraph (b) of this section, including cases subject to a finding of good cause or to a written agreement:

(1) The wages of the absent parent shall become subject to the withholding on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of:

(i) The date on which the absent parent requests that withholding begin;

(ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or

(iii) Such earlier date as State law or procedure may provide.

(2) The State must send the advance notice required under paragraph (d) of this section to the absent parent within 15 calendar days of the appropriate date under paragraph (c)(1) of this section if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 15 calendar days of locating the absent parent.

(3) The only basis for contesting a withholding under this paragraph is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged absent parent.

(d) *Advance notice to the absent parent in cases of initiated withholding.* (1) On the date specified in paragraph (c)(2) of this section, the State must send advance notice to the absent parent regarding the initiated withholding. The notice must inform the absent parent:

(i) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

(ii) That the provision for withholding

applies to any current or subsequent employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (e) of this section.

(2) (i) The requirement for advance notice to the absent parent under paragraph (d)(1) of this section and for State procedures when the absent parent contests the withholding in response to the advance notice under paragraph (e) of this section do not apply in the case of any State which had a withholding system in effect on August 16, 1984 if the system provided on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (d)(2)(i) of this section applies must meet all other requirements of this section and must send notice to the employer under paragraph (f) of this section within 15 calendar days of the appropriate date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

(e) *State procedures when the absent parent contests initiated withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 calendar days of sending advance notice to the absent parent under paragraph (d) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and, if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (f) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (f) of this section.

(f) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (f)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State (or to such other individual or entity as the State may direct) within 10 working days of the date the absent parent is paid, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

(vi) That, if the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 working days following the date the notice was mailed; and

(x) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known.

(2) In the case of an immediate wage withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (f)(1) of this section within 15 calendar days of the date the support order is entered if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, if the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with the requirements of paragraph (d)(1)(iv) of this section, the State must send the notice to the employer required under paragraph (f)(1) of this section within 15 calendar days of the end of the contact period if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(4) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer, in accordance with the requirements of paragraph (f)(1) of this section, that the withholding is binding on the new employer.

(g) *Administration of withholding.* (1) The State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments.

(2)(i) The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State; and (ii) the State may designate only one entity to administer withholding in each jurisdiction.

(3) Effective October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State.

(4) Amounts withheld must be distributed in accordance with section 457 of the Act and §§ 302.32, 302.51 and 302.52 of this chapter.

(5) The State must reduce its IV–D expenditures by any interest earned by the State's designee on withheld amounts.

(h) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system

so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States. A State may require registration of orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes established in paragraph (h)(5) of this section.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) Within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding, the initiating State must notify the IV–D agency of the State in which the absent parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.

(4) The State in which the absent parent is employed must implement withholding in accordance with paragraph (h)(5) of this section upon receipt of the notice required in paragraph (h)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Within 15 calendar days of location of the absent parent and his or her employer, send notice to the absent parent, if appropriate, in accordance with the requirements of paragraph (d) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding, if appropriate, in accordance with paragraph (e) of this section;

(iii) Send notice to the employer in accordance with the requirements of paragraph (f) of this section; and

(iv) Notify the State in which the custodial parent is receiving services when the absent parent is no longer employed in the State and provide the name and address of the absent parent and new employer, if known.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the absent parent is employed.

(7) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the absent parent is employed shall apply.

(i) *Provision for withholding in all child support orders.* Child support orders issued or modified in the State between October 1, 1985, and January 1, 1994, or modified on or after January 1, 1994, must have a provision for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV–D services. This requirement does not alter the requirement governing all IV–D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

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