DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 305, and 308

RIN 0970–AC–37

Child Support Enforcement Program; Intergovernmental Child Support

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This rule revises Federal requirements for establishing and enforcing intergovernmental support obligations in Child Support Enforcement (IV-D) program cases receiving services under title IV-D of the Social Security Act (the Act). This final rule revises previous interstate requirements to apply to case processing in all intergovernmental cases; requires the responding State IV-D agency to pay the cost of genetic testing; clarifies responsibility for determining in which State tribunal a controlling order determination is made where multiple support orders exist; recognizes and incorporates electronic communication advancements; and makes conforming changes to the Federal substantial compliance audit and State self-assessment requirements.

DATES: This rule is effective [6 MONTHS FROM PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 454(9), 42 U.S.C. §654(9), of the Act addresses interstate cooperation. These final rules are published under the authority granted to the Secretary of the U.S. Department of Health and Human Services (the Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub.L. 104-193), amended the Act by adding section 466(f), 42 U.S.C. §666(f), which mandated that all States have in effect by January 1, 1998, the Uniform Interstate Family Support Act (UIFSA) as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws (NCCUSL). PRWORA also added sections 454(32) and 459A of the Act, 42 U.S.C. §§ 654(32) and 659a, requiring State IV-D agencies to provide services in international cases and authorizing the Secretary of the Department of State (DOS), with the concurrence of the Secretary, to enter into bilateral arrangements with foreign countries for child support enforcement, respectively. The Federal Full Faith and Credit for Child Support Orders Act of 1994 (FFCCSOA), 28 U.S.C. §1738B, as amended by PRWORA, requires each State and Tribe to enforce, according to its terms, a child support order issued by a court

or administrative authority of another State or Tribe (See OCSE-AT-02-03). Further, section 455(f) of the Act, 42 U.S.C. §655(f), which authorized direct funding of Tribal Child Support Enforcement programs, was added by PRWORA and amended by the Balanced Budget Act of 1997 (Pub. L. 105–33).

II. Background

A. Nature of the Problem

The Child Support Enforcement (CSE) program is a Federal/State/Tribal/local partnership established to help families by ensuring that parents support their children even when they live apart. Payment of child support increases family income and promotes child well-being. Child support has become one of the most substantial income supports for low-income families who receive it. All States and territories run a IV-D program.

On March 30, 2004, the IV-D program expanded its scope to include federally-recognized American Indian Tribes and Tribal organizations with approved Tribal IV-D programs through the Final Rule on Tribal Child Support Enforcement Programs (45 CFR Part 309). Currently, thirty-six Tribes operate a comprehensive child support program and nine Tribes operate a start-up program funded under title IV-D of the Social Security Act. From 2004 to 2008, Comprehensive Tribal IV-D programs collected more than $83.3 million in child support. The Tribal IV-D program continues to grow as more federally-recognized Tribes and Tribal organizations apply for OCSE funding to operate Tribal IV-D programs.

The complexities of child support enforcement are compounded when parents reside in different jurisdictions and the interjurisdictional caseload is substantial. In FY

2008, over a million cases were sent from one State to another. This number does not include cases where a single State established or enforced a support obligation against a nonresident using long-arm jurisdiction or direct enforcement remedies without involving another IV-D agency. Additionally, in FY 2008, interstate collections increased 13.2 percent over FY 2004 collections.

The enactment of UIFSA by States and nearly a decade of State experience under this uniform law, as well as the passage of FFCCSOA, have served to harmonize the interjurisdictional legal framework. Expanded use of long-arm jurisdiction, administrative processes, and direct income withholding have been instrumental in breaking down barriers and improving interstate child support. As a result, the former regulations governing interstate cases are outdated. While they broadly addressed UIFSA, they did not fully reflect the legal tools available under that Act, other Federal mandates and remedies, improved technology, or IV-D obligations in Tribal and international cases.

Additionally, although our regulatory authority extends only to States and Tribes operating IV-D programs, the IV-D caseload includes cases from Tribal IV-D programs, other States, and other countries. The creation of the Tribal IV-D program pursuant to section 455(f) of the Act and implementing regulations at 45 CFR Part 309, and the central role of OCSE and State IV-D agencies in international cases under section 459A of the Act, highlight the need to refocus interstate regulations to address requirements for State IV-D programs' processing of intergovernmental IV-D cases.

B. Current Law on Intergovernmental Case Processing

1. Uniform Interstate Family Support Act (UIFSA)

UIFSA is a comprehensive model Act focusing on the interstate establishment, modification, and enforcement of support obligations. As indicated earlier, section 466(f) of the Act requires all States to enact UIFSA as approved by the American Bar Association on February 9, 1993, as in effect on August 22, 1996, including any amendments officially adopted as of such date by NCCUSL.

Many of UIFSA's provisions provide solutions to the problems inherent with the interstate establishment and enforcement of child support obligations. For example, UIFSA covers all cases where the custodial and noncustodial parents reside in different States. In addition to traditional state-to-state legal actions, it provides for long-arm jurisdiction to establish paternity or child support, continuing jurisdiction by a State to enforce an existing support order, and one-state enforcement remedies such as direct income withholding. UIFSA contains enhanced evidentiary provisions, including use of teleconferencing, electronic transmission, and federally-mandated forms. It precludes the entry of a new (*de novo*) support order where a valid order exists, ending the longstanding practice of establishing multiple support orders, and strictly prescribes when a State has the authority to modify the child support order of another State, Tribe, or country.

UIFSA introduced the principle of continuing, exclusive jurisdiction (CEJ) to child support. CEJ requires that only one valid current support order may be in effect at any one time. As long as one of the individual parties or the child continues to reside in the issuing State, and as long as the parties do not agree to transfer the case to another jurisdiction, the issuing tribunal's authority to modify its order is continuing and

exclusive. Jurisdiction to modify an order may be lost only if all the relevant persons have permanently left the issuing State or if the parties file a written consent to transfer jurisdiction of the case to the tribunal of another State. UIFSA provides that the one order remains in effect as the family or its individual members move from one State to another.

UIFSA includes a transitional procedure for the eventual elimination of existing multiple support orders in an expeditious and efficient manner. To begin the process toward a one-order system, UIFSA provides a relatively straight-forward decision matrix designed to identify a single valid order that is entitled to prospective enforcement in every State. This process is referred to as determination of controlling order (DCO). UIFSA specifies in detail how the DCO should be made. If only one child support order exists, it is the controlling order irrespective of when and where it was issued and whether any of the individual parties or the child continues to reside in the issuing State.

UIFSA is currently State law in all 50 States, the District of Columbia and the territories. Twenty-one States have adopted the 2001 amendments and received a State Plan exemption under section 466(d) of the Act, 42 U.S.C. §666(d), from OCSE allowing use of the 2001 provisions. Currently, three States have adopted UIFSA (2008), with the effective date of the amendments delayed until the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Nov. 23, 2007, is ratified and the U.S. deposits its instrument of ratification. OCSE does not require that these States request an exemption.

2. <u>One-state Approaches to Interstate Case Processing</u>

Historically, IV-D agencies have sought to resolve cases involving nonresident noncustodial parents by using the State's statutory authority to obtain or retain personal jurisdiction over the out-of-state party. The authority of a State to subject a nonresident to its laws is set out in State statutes, subject to the due process provisions of the U.S. Constitution. As described earlier, UIFSA is a State law, containing both an expansive long-arm provision (section 201), continuing, exclusive jurisdiction to modify an existing support order, and continuing, although not exclusive, jurisdiction to enforce an existing order (e.g. sections 205 and 206). Since 1984, States have been required to adopt procedures for enforcing the income withholding orders of another State (section 466(b)(9) of the Act, 42 U.S.C. §466(b)(9)). UIFSA authorizes direct income withholding, allowing a State to serve directly the obligor's employer in the other State with the income withholding order/notice (e.g. sections 501 and 502). These provisions afford IV-D agencies a greater opportunity to use one-state remedies in factually-appropriate cases, rather than involving a second State. As discussed later, cooperation among States in requesting and providing limited services, such as quick locate, coordination of genetic testing, and facilitation of gathering and transmitting evidence, makes the use of one-state remedies more robust.

3. Tribal IV-D and International Child Support Enforcement

PRWORA authorized direct funding of Tribes and Tribal organizations for operating child support enforcement programs under section 455(f) of the Act, 42 U.S.C. §655(f). The U.S. Department of Health and Human Services (the Department) acknowledges the special government-to-government relationship between the Federal

Government and federally-recognized Tribes in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to administer their own IV-D programs to meet the needs of children and their families. A Tribal IV-D agency must specify in its Tribal IV-D plan that the Tribal IV-D agency will:

- Extend the full range of services available under its IV-D plan to respond to all requests from, and cooperate with, State and other Tribal IV-D agencies; and
- Recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under the FFCCSOA, 28 U.S.C. §1738B. (See 45 CFR 309.120).

Likewise, as stated in 45 CFR 302.36(a)(2), a State must extend the full range of services available under its IV-D plan to cases referred from Tribal IV-D programs.

Regarding international cases, section 459A of the Act, 42 U.S.C. §659a authorizes the Department of State (DOS), with the concurrence of the Secretary, to enter into bilateral arrangements with foreign countries for child support enforcement. To date, the U.S. has federal-level arrangements with fourteen countries and eleven Canadian Provinces and Territories. Information about these arrangements and guidance on working international cases is on the OCSE international website: http://www.acf.hhs.gov/programs/cse/international/.

UIFSA recognizes the importance of the Tribes and foreign countries to provide for their children. Under UIFSA the term "State" includes Indian Tribes (section 101(19)). The definition of "State" in UIFSA (2001) (section 102(21)) also includes foreign countries or political subdivisions that have been declared to be a foreign

reciprocating country or political subdivision under Federal law or that have established a reciprocal agreement for child support with a U.S. State. While UIFSA governs State child support proceedings, it does not govern child support activities in other countries or Tribes.

C. Need for and Purpose of this Rule

The interstate regulations that appeared in 45 CFR 303.7 prior to the publication of this rule were originally effective February 22, 1988. Many changes have taken place in the IV-D program since 1988, including the passage of UIFSA, PRWORA, and FFCCSOA (28 U.S.C. 1738B).

State IV-D agencies have more authority to take actions directly across State lines than they used to. Because they have the authority to bypass IV-D agencies in other States, confusion can sometimes arise on the part of custodial and noncustodial parents, employers, and State IV-D workers about correct arrearage balances and how to account for collections. It is to address these issues and otherwise update the interstate regulations that we revised 45 CFR 303.7.

This rule extensively reorganizes the 1988 interstate regulations at 45 CFR 303.7 to clarify and streamline case processing responsibilities in intergovernmental cases, incorporating both optional and required procedures under PRWORA and enhanced technology, particularly in the area of communications. We also responded to specific changes requested by State IV-D agencies, for example, by revising responsibility for advancing the cost of genetic testing. The rule addresses case processing ambiguities raised by practitioners regarding determination of controlling orders, interstate income

withholding, and case closure rules in 45 CFR 303.11. Finally, the rule makes conforming changes to the Federal substantial compliance audit (45 CFR 305.63) and State self-assessment requirements (45 CFR 308.2).

III. Provisions of the Regulation and Changes Made in Response to Comments

The following is a summary of the regulatory provisions included in this final rule. The Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on December 8, 2008 (73 Fed. Reg. 74408). The comment period ended February 6, 2009. During the comment period, we received 25 sets of comments. In general, the commenters were supportive of changes in the proposed rule to update and revise the rules for intergovernmental cases.

With a few exceptions explained in the applicable sections, we have substituted "intergovernmental" in lieu of "interstate" throughout these provisions. The term encompasses not only IV-D cases between States, but also all IV-D cases where the parents reside in different jurisdictions, including cases between a State and Tribal IV-D program, cases between a State and a foreign country under sections 454(32) and 459A of the Act, and cases where the State has asserted authority over a nonresident under long-arm jurisdiction. Please note that while this intergovernmental regulation applies to all cases involving referrals for services between States and other States, Tribes, or countries, the intergovernmental rule also applies more broadly to include some cases where a referral has not been made. Specifically, the rule also applies to instances when an initiating agency is either engaging in preliminary fact-finding activities, such as taking steps toward getting a determination of controlling order, or is deciding whether to

use a one-state approach and/or has requested services from another agency using a one-state approach.

Specific changes made in response to comments are discussed in more detail under the Response to Comments section of this preamble.

Part 301—State Plan Approval and Grant Procedures

Section 301.1—General definitions

This rule adds definitions of terms used in program regulations. In this section of the preamble, we have grouped the new definitions by topic for a more coherent discussion, rather than alphabetically as they will appear in § 301.1.

Two definitions pertain particularly to international child support case processing. We define Country to include both a foreign reciprocating country (FRC) and any foreign country (or political subdivision thereof) with which a State has entered into a reciprocal arrangement pursuant to section 459A(d) of the Act. We also define Central Authority as the agency designated by a government to facilitate support enforcement with an FRC. The Federal statute requires that the country with which a Federal-level agreement is entered establish a central authority to facilitate implementation of support establishment and enforcement in cases involving residents of the U.S.

In the final rule, in response to comments, we edited the proposed definition of Intergovernmental IV-D case to make the wording parallel to the definition for Interstate IV-D case, discussed below, since the concepts are similar. Also in response to comments, we clarified that an intergovernmental IV-D case also may include cases in which the State is seeking only to collect assigned arrearages, and may no longer involve the parents and children. In this final rule, the definition for Intergovernmental IV-D case

reads as follows: "Intergovernmental IV-D case means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between States, Tribes, and countries. An intergovernmental IV-D case also may include cases in which a State agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State."

To identify cases in which the State IV-D agency's responsibility extends only to cases involving two or more States, we define Interstate IV-D case. In response to comments, we made several changes to the definition of Interstate IV-D case by removing the concept of one-state interstate from the definition, clarifying that there has to be a referral between States, and including cases in which the State is seeking only to collect assigned arrearages. In this final rule, Interstate IV-D case means "a IV-D case in which the noncustodial parent lives and/or works in a different State than the custodial parent and child(ren) that has been referred by an initiating State to a responding State for services. An interstate IV-D case also may include cases in which a State is seeking only to collect support arrearages, whether owed to the family or assigned to the State."

In response to comments, OCSE omitted the proposed definition for One-state interstate IV-D case and removed reference to the phrase in the final rule. We have added, however, the definition for One-state remedies, which includes both long-arm and direct enforcement techniques. In the final rule, use of One-state remedies means "the exercise of a State's jurisdiction over a non-resident parent or direct establishment,

enforcement, or other action by a State against a non-resident parent in accordance with the long-arm provision of UIFSA or other State law."

Uniform Interstate Family Support Act (UIFSA) means "the model act promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and mandated by section 466(f) of the Act to be in effect in all States."

The definitions of Initiating agency and Responding agency establish a common understanding in the context of all intergovernmental IV-D cases. In response to comments, Initiating agency is no longer defined as an agency that has referred a case to another agency; but instead as an agency in which an individual has applied for or is receiving services. The definition now reads, "a State or Tribal IV-D agency or an agency in a country, as defined in this rule, in which an individual has applied for or is receiving services."

Responding agency means "the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case." Although the definitions are inclusive, the requirements in this rule only apply to State IV-D programs, not Tribal IV-D programs or other countries.

Two other terms flow principally from UIFSA: Tribunal and Controlling Order State. Tribunal means "a court, administrative agency, or quasi-judicial entity authorized under State law to establish, enforce, or modify support orders or to determine parentage."

Because of the need to determine the controlling order in multiple order situations, we responded to requests from our partners to set out State IV-D responsibilities when multiple support orders exist in an interstate case. The rules

regarding determination of controlling order (DCO) are contained in § 303.7. We define Controlling Order State as "the State in which the only order was issued or, where multiple orders exist, the State in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued."

The definition of Form accommodates new storage and transmission technologies as they become available. In response to comments, we updated the name of the income withholding form that is mentioned within the definition. The definition reads, "Form means a federally-approved document used for the establishment and enforcement of support obligations whether compiled or transmitted in written or electronic format, including but not limited to the Income Withholding for Support form, and the National Medical Support Notice. In interstate IV-D cases, such forms include those used for child support enforcement proceedings under UIFSA. Form also includes any federally-mandated IV-D program reporting form, where appropriate." Current versions of these forms are located on the OCSE Web site at h*ttp://www.acf.hhs.gov/programs/cse/forms/*.

Part 302—State Plan Requirements

Section 302.36—Provision of services in intergovernmental IV-D cases

Former § 302.36 addressed State plan requirements in interstate and Tribal IV-D cases. We made changes to both the heading and the body of the section to address international IV-D cases. The changes clarify that a State must provide services in all intergovernmental IV-D cases as we defined that term in § 301.1.

Paragraph (a)(1) requires the State plan to: "provide that, in accordance with § 303.7 of this chapter, the State will extend the full range of services available under its IV-D plan to: (1) Any other State." Paragraph (a)(2) requires States to provide services

to Tribal IV-D programs. Paragraph (a)(3) requires that the full range of services also be provided to: "Any country as defined in § 301.1 of this chapter." In the final rule, we corrected the regulatory citation for the definition of the term "Country" by replacing § 303.1 with § 301.1. Section 302.36(b) is revised by substituting "intergovernmental" for "interstate" and amending the reference to State central registry responsibilities to § 303.7(b), consistent with changes we made to § 303.7.

Part 303—Standards for Program Operations

Section 303.7—Provision of services in intergovernmental IV-D cases

We reorganized § 303.7 to clarify IV-D agency responsibilities and to expand the scope from interstate to all intergovernmental IV-D cases, as defined by § 301.1. In many cases, existing paragraphs were moved with minor language changes only to improve readability. Other paragraphs of this section were revised to either shift responsibility between the initiating and responding agencies or address new case processing responsibilities.

The heading of § 303.7 substitutes "intergovernmental" for "interstate."

(a) General responsibilities

Paragraph (a) contains requirements that apply to States, irrespective of the IV-D agency's role in the case as either an initiating or responding agency.

Paragraph (a)(1) requires a IV-D agency to: "Establish and use procedures for managing its intergovernmental IV-D caseload that ensure provision of necessary services as required by this section and include maintenance of necessary records in accordance with § 303.2 of this part." This is a general responsibility of all IV-D agencies.

Similarly, § 303.7(a)(2) and (3) require the IV-D agency to periodically review program performance for effectiveness and to ensure adequate organizational structure and staffing to provide services in intergovernmental cases.

Section 303.7(a)(4) requires the IV-D agency to: "Use federally-approved forms in intergovernmental IV-D cases, unless a country has provided alternative forms as part of a chapter of A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries. When using a paper version, this requirement is met by providing the number of complete sets of required documents needed by the responding agency, if one is not sufficient under the responding agency's law." In response to comments, we now mention the possibility that an FRC may request a State use a particular FRC-specific form. Also in response to comments, we added the second sentence of § 303.7(a)(4) to require the initiating State IV-D agency, when it sends a paper version of the required documents, to send the number of sets needed by the responding State if one copy is not sufficient under the responding State's law.

Section 303.7(a)(5) requires IV-D agencies to: "Transmit requests for information and provide requested information electronically to the greatest extent possible." In response to comments, we removed the proposed phrase "in accordance with instructions issued by the Office." Nevertheless, OCSE may provide instructions to States if deemed necessary and appropriate.

In response to State comments, we clarified in the rule the responsibilities of IV-D agencies to determine which of multiple current support orders is controlling prospectively. Section 303.7(a)(6) includes a general responsibility which requires all IV-D agencies to: "Within 30 working days of receiving a request, provide any order and

payment record information requested by a State IV-D agency for a controlling order determination and reconciliation of arrearages, or notify the State IV-D agency when the information will be provided." In response to concerns by commenters that 30 working days may be inadequate, we added an option in § 303.7(a)(6) to notify the State IV-D agency when the information will be provided if there is a delay.

Section 303.7(a)(7) requires IV-D agencies to: "Notify the other agency within 10 working days of receipt of new information on an intergovernmental case."

Section 303.7(a)(8) requires all IV-D agencies to: "Cooperate with requests for the following limited services: quick locate, service of process, assistance with discovery, assistance with genetic testing, teleconferenced hearings, administrative reviews, high-volume automated administrative enforcement in interstate cases under section 466(a)(14) of the Act, and copies of court orders and payment records. Requests for other limited services may be honored at the State's option." In response to comments, the final rule specifies the limited services that State IV-D agencies must provide if requested and adds that State IV-D agencies have the option to honor requests for other types of limited services.

(b) Central registry

Section 303.7(b)(1) provides: "The State IV-D agency must establish a central registry responsible for receiving, transmitting, and responding to inquiries on all incoming intergovernmental IV-D cases."

Paragraph (b)(2) requires that the State's central registry must: "Within 10 working days of receipt of an intergovernmental IV-D case," take the following four actions: "(i) Ensure that the documentation submitted with the case has been reviewed to

determine completeness; (ii) Forward the case for necessary action either to the central State Parent Locator Service for location services or to the appropriate agency for processing; (iii) Acknowledge receipt of the case and request any missing documentation; and (iv) Inform the initiating agency where the case was sent for action."

Paragraph (b)(3) requires: "If the documentation received with a case is incomplete and cannot be remedied by the central registry without the assistance of the initiating agency, the central registry must forward the case for any action that can be taken pending necessary action by the initiating agency." In response to comments, we replaced "inadequate" with "incomplete."

Paragraph (b)(4) requires the central registry to: "respond to inquiries from initiating agencies within 5 working days of receipt of the request for a case status review."

(c) Initiating State IV-D agency responsibilities

The first step in deciding whether a determination of controlling order (DCO) is necessary is to identify all support orders. Accordingly, § 303.7(c)(1) adds the requirement that an initiating agency must first: "Determine whether or not there is a support order or orders in effect in a case using the Federal and State Case Registries, State records, information provided by the recipient of services, and other relevant information available to the State."

In paragraph (c)(2), the initiating agency must: "Determine in which State a determination of the controlling order and reconciliation of arrearages may be made where multiple orders exist." If more than one State tribunal has the jurisdiction to

determine the controlling order, pursuant to paragraph (c)(4)(i), the initiating agency must decide which State IV-D agency should file for such relief.

Under paragraph (c)(3), the initiating agency must: "Determine whether the noncustodial parent is in another jurisdiction and whether it is appropriate to use its one-state remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding."

Under § 303.7(c)(4), in response to comments, we made additional clarifying changes. The final rule specifies that: "Within 20 calendar days of completing the actions required in paragraphs (1) through (3), and, if appropriate, receipt of any necessary information needed to process the case," the initiating agency must under paragraph (c)(4)(i), if multiple orders are in existence and identified under paragraph (c)(1), "ask the appropriate intrastate tribunal, or refer the case to the appropriate responding State IV-D agency, for a determination of the controlling order and a reconciliation of arrearages if such a determination is necessary." In addition, within the 20-calendar-days time frame, under paragraph (c)(4)(ii), the initiating agency must "refer any intergovernmental IV-D case to the appropriate State Central Registry, Tribal IV-D program, or Central Authority of a country for action, if one-state remedies are not appropriate."

Section 303.7(c)(5) requires the initiating agency to: "Provide the responding agency sufficient, accurate information to act on the case by submitting with each case any necessary documentation and intergovernmental forms required by the responding agency." Similarly, § 303.7(c)(6) requires the initiating agency to: "Within 30 calendar days of receipt of the request for information, provide the responding agency with an

updated intergovernmental form and any necessary additional documentation, or notify the responding agency when the information will be provided."

Section 303.7(c)(7) requires the initiating agency to: "Notify the responding agency at least annually, and upon request in an individual case, of interest charges, if any, owed on overdue support under an initiating State order being enforced in the responding jurisdiction." In response to comments on the proposed rule, we added a requirement to provide notice annually, rather than quarterly as previously proposed in the NPRM, and upon request in an individual case.

Under paragraph (c)(8), the initiating State agency must: "Submit all past-due support owed in IV-D cases that meet the certification requirements under § 303.72 of this part for Federal tax refund offset." As explained under the discussion in response to comments, we deleted the proposed requirement that only the initiating State could submit past-due support for other Federal remedies, such as administrative offset or passport denial. In the proposed rule, we expressly assigned responsibility in an interstate case to the initiating agency to submit qualifying past-due support for all Federal remedies, consistent with submittal rules for Federal tax refund offset under § 303.72(a)(1). Our intent was to avoid both States submitting the same arrearage in a single case; however, we have learned that there may be situations where the responding State IV-D agency may submit the case that it is working on behalf of the initiating State IV-D agency for administrative offset, passport denial, Federal insurance match, and Multi State Financial Institution Data Match (MSFIDM) on its own, or at the initiating State IV-D agency's request. Therefore, under paragraph (c)(8) in the final rule, the initiating State IV-D agency must: "Submit all past-due support owed in IV-D cases that

meet the certification requirements under § 303.72 of this part for Federal tax refund offset."

Section 303.7(c)(9) requires that the initiating State must send a request for a review of a support order and supporting documentation within 20 calendar days of determining that such a request is required.

Section 303.7(c)(10) requires the initiating State to: "Distribute and disburse any support collections received in accordance with this section and §§ 302.32, 302.51, and 302.52 of this chapter, sections 454(5), 454B, 457, and 1912 of the Act, and instructions issued by the Office."

Section 303.7(c)(11) requires an initiating State agency to: "Notify the responding agency within 10 working days of case closure that the initiating State IV-D agency has closed its case pursuant to § 303.11 of this part, and the basis for case closure." In response to comments, we added the phrase, "and the basis for case closure."

Paragraph (c)(12) addresses the issue of duplicate withholding notices/orders for the same obligor being sent to the obligor's employer by both the initiating and responding States in the same interstate case. We are requiring the initiating agency under paragraph (c)(12) to: "Instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice, with respect to the same case, to the same or another employer unless the two States reach an alternative agreement on how to proceed." The phrase "with respect to the same case" was added to the final rule for clarity. This procedure will avoid duplicate State income

withholding orders or notices; however, there is nothing in this rule that authorizes a State to change the payee on another State's order through direct income withholding. This prohibition is addressed in Policy Interpretation Question PIQ-01-01, which states, "if a support order or income withholding order issued by one State designates the person or agency to receive payments and the address to which payments are to be forwarded, an individual or entity in another State may not change the designation when sending an Order/Notice to Withhold [Income for] Child Support." (The Order/Notice to Withhold Income for Child Support form is now referred to as the "Income Withholding for Support" form.) While we recognize that section 466(f) of the Act requires States to enact UIFSA 1996, section 319(b) of UIFSA (2001) provides a mechanism for redirection of payments when neither the obligor, obligee, nor child reside in the State that issued the controlling order.

The final requirement on initiating IV-D agencies, § 303.7(c)(13) addresses concerns about undistributed collections in a responding State because the initiating State closed its case and refuses to accept any collections in that case from the responding State. Section 303.7(c)(13) requires the initiating State to: "If the initiating agency has closed its case pursuant to § 303.11 and has not notified the responding agency to close its corresponding case, make a diligent effort to locate the obligee, including use of the Federal Parent Locator Service and the State Parent Locator Service, and accept, distribute and disburse any payment received from a responding agency."

(d) Responding State IV-D agency responsibilities

In the final rule, we have revised the introductory language from the proposed rule to clarify that the requirements in section 303.7(d) apply to State IV-D agencies

specifically. The introductory language now reads as follows: "Upon receipt of a request for services from an initiating agency, the responding State IV-D agency must…." Section 303.7(d)(1) requires a responding agency to: "Accept and process an intergovernmental request for services, regardless of whether the initiating agency elected not to use remedies that may be available under the law of that jurisdiction."

The opening sentence in § 303.7(d)(2) states that: "Within 75 calendar days of receipt of an intergovernmental form and documentation from its central registry…" the responding agency must take the specified action.

Paragraph (d)(2)(i) requires the responding State IV-D agency to: "Provide location services in accordance with § 303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the noncustodial parent." Paragraph (d)(2)(ii) provides: "If unable to proceed with the case because of inadequate documentation, notify the initiating agency of the necessary additions or corrections to the form or documentation." Paragraph (d)(2)(iii) provides: "If the documentation received with a case is incomplete and cannot be remedied without the assistance of the initiating agency, process the case to the extent possible pending necessary action by the initiating agency." In response to comments, we replaced "inadequate" with "incomplete."

In the proposed rule, OCSE requested feedback regarding actions that should be taken when a noncustodial parent is located in a different State. Based on the comments received, § 303.7(d)(3) was revised to replace the phrase "initiating State" with "initiating agency," and the term "forward" with "forward/transmit." In response to comments, we also have clarified that the responding State's own central registry should be notified

where that case has been sent. The paragraph now reads as follows: "Within 10 working days of locating the noncustodial parent in a different State, the responding agency must return the forms and documentation, including the new location, to the initiating agency, or, if directed by the initiating agency, forward/transmit the forms and documentation to the central registry in the State where the noncustodial parent has been located and notify the responding State's own central registry where the case has been sent."

Paragraph (d)(4) requires the responding State IV-D agency to: "Within 10 working days of locating the noncustodial parent in a different political subdivision within the State, forward/transmit the forms and documentation to the appropriate political subdivision and notify the initiating agency and the responding State's own central registry of its action." Again, we changed "initiating State" to "initiating agency," and clarified that the central registry in the responding State also should be notified where the case has been sent. In addition, to avoid ambiguity, we replaced the term "jurisdiction" with "political subdivision."

Paragraph (d)(5) adds a notice requirement where the initiating State agency has requested a controlling order determination. In this case, the responding agency must under paragraph (d)(5)(i): "File the controlling order determination request with the appropriate tribunal in its State within 30 calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later." In response to comments we increased the time frame from 10 working days to 30 calendar days. Under paragraph (d)(5)(ii), the responding State must: "Notify the initiating State agency, the Controlling Order State and any State where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within 30 calendar days

of receipt of the determination from the tribunal." The 30-calendar-days time frame in paragraph (d)(5)(ii) is identical to that included under section 207(f) of UIFSA, under which the party obtaining the order shall file a certified copy of the order with each tribunal that issued or registered an earlier order of child support, within 30 calendar days after issuance of an order determining the controlling order.

Section 303.7(d)(6) requires the responding agency to: "Provide any necessary services as it would in an intrastate IV-D case," including 6 specific services. Paragraph (d)(6)(i) requires responding State agencies to provide services including: "Establishing paternity in accordance with § 303.5 of this part and, if the agency elects, attempting to obtain a judgment for costs should paternity be established." Paragraph (d)(6)(ii) requires responding State agencies to provide services including: "Establishing a child support obligation in accordance with § 302.56 of this chapter and §§ 303.4, 303.31 and 303.101 of this part." In response to comments, paragraph (d)(6)(i) allows State IV-D agencies to attempt to obtain a judgment for costs when paternity is established.

In response to comments, we moved the responsibility to report overdue support to Consumer Reporting Agencies, in accordance with section 466(a)(7) of the Act and § 302.70(a)(7), from initiating State IV-D agencies, as suggested in the proposed rule, to responding State IV-D agencies under paragraph (d)(6)(iii).

Paragraph (d)(6)(iv) addresses a responding State agency's responsibility for processing and enforcing orders referred by an initiating agency. In response to comments to the initiating State agency's responsibility under paragraph (c)(8), to submit past due support for Federal enforcement remedies, we have added language to indicate that the responding State agency may submit cases for other Federal enforcement

remedies such as administrative offset and passport denial. The paragraph now reads as follows: "Processing and enforcing orders referred by an initiating agency, whether pursuant to UIFSA or other legal processes, using appropriate remedies applied in its own cases in accordance with §§ 303.6, 303.31, 303.32, 303.100 through 303.102, and 303.104 of this part, and submit the case for such other Federal enforcement techniques as the State determines to be appropriate, such as administrative offset under 31 CFR 285.1 and passport denial under section 452(k) of the Act."

Paragraph (d)(6)(v) requires the responding agency to provide any necessary services as it would in an intrastate IV-D case including: "Collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the initiating agency. The IV-D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter, and include the responding State's case identifier and locator code, as defined in accordance with instructions issued by this Office." This change allows OCSE greater flexibility to define consistent identifier and locator codes, including ones for FRCs (International Standards Organization (ISO) codes) and Tribal IV-D programs (Bureau of Indian Affairs (BIA) codes). OCSE DCL–07–02 (*http://www.acf.hhs.gov/programs/cse/pol/DCL/2007/dcl-07-02.htm*) provides locator code instructions, including for Tribal IV-D and international cases.

Under paragraph (d)(6)(vi), the responding State IV-D agency is responsible for: "Reviewing and adjusting child support orders upon request in accordance with § 303.8 of this part."

Paragraph (d)(7) requires the responding State IV-D agency to: "Provide timely notice to the initiating agency in advance of any hearing before a tribunal that may result in establishment or adjustment of an order."

In the NPRM, we added proposed § 303.7(d)(8) to address allocation of collections in interstate cases with arrearages owed by the same obligor and assigned to the responding State in a different case. In response to comments, however, this requirement was removed from the final rule. Given the lack of consensus reflected in the comments, we believe the issue of how a responding State should allocate collections between assigned arrearages on its own case and an interstate case may better be addressed in the context of meetings on intergovernmental cooperation rather than by regulation.

Section 303.7(d)(8) requires the responding State agency to: "Identify any fees or costs deducted from support payments when forwarding payments to the initiating agency in accordance with paragraph (d)(6)(v) of this section."

Section 303.7(d)(9) details the actions a responding State must take when an initiating State has elected to use direct income withholding in an existing intergovernmental IV-D case. The initiating State is authorized to use direct income withholding only where it follows requirements to instruct the responding agency to close its corresponding case under § 303.7(c)(12). In the final rule, paragraph (d)(9) requires the responding agency to: "Within 10 working days of receipt of instructions for case closure from an initiating agency under paragraph (c)(12) of this section, stop the responding State's income withholding order or notice and close the intergovernmental IV-D case, unless the two States reach an alternative agreement on how to proceed." In

response to comments, the time frame by which a responding State must stop their income withholding order and close the intergovernmental case is clarified to be "working" days. Also in response to comments, we replaced the words "a request" in the proposed rule with "instructions" to emphasize that this requirement is mandatory, not optional, and to be consistent with the language in the corresponding initiating State responsibilities section, under paragraph (c)(12), which uses the word "instruct."

In the final rule, requirement (d)(10) requires the responding State IV-D agency to: "Notify the initiating agency when a case is closed pursuant to §§ 303.11(b)(12) through (14) and 303.7(d)(9) of this part." We added the reference to § 303.7(d)(9) and the applicable paragraphs in § 303.11 to clarify the authority under which a responding State IV-D agency may close an intergovernmental case and is required to notify the initiating agency.

(e) Payment and recovery of costs in intergovernmental IV-D cases

Section 303.7(e)(1) reads: "The responding IV-D agency must pay the costs it incurs in processing intergovernmental IV-D cases, including the costs of genetic testing. If paternity is established, the responding agency, at its election, may seek a judgment for the costs of testing from the alleged father who denied paternity."

Paragraph (e)(2) reads as follows: "Each State IV-D agency may recover its costs of providing services in intergovernmental non-IV-A cases in accordance with § 302.33(d) of this chapter, except that a IV-D agency may not recover costs from an FRC or from a foreign obligee in that FRC, when providing services under sections 454(32) and 459A of the Act." The limitation on cost recovery has been added as

required by PRWORA. Services between FRCs must be cost free. States entering a state-level arrangement with a non-FRC country under section 459A may elect to provide cost-free services, but are not mandated to do so. Accordingly, this section refers to FRCs rather than using the more inclusive term "country." However, there is no similar prohibition to charging fees or recovering costs in cases with Tribal IV-D agencies. In addition, Tribal IV-D agencies have the option under § 309.75(e) to charge fees and recover costs.

Part 303—Standards for Program Operation

Section 303.11—Case closure criteria

Section 303.11(b)(12) allows a State IV-D agency to close a case if: "The IV-D agency documents failure by the initiating agency to take an action which is essential for the next step in providing services."

Paragraph (b)(13) adds a case closure criterion under which the responding State agency is authorized to close its intergovernmental case based on a notice under § 303.7(c)(11) from the initiating agency that it has closed its case. Under § 303.7(c)(11), an initiating State agency must: "Notify the responding agency within 10 working days of case closure that the initiating State IV-D agency has closed its case pursuant to § 303.11 of this part, and the basis for case closure." Paragraph (b)(13) provides, "The initiating agency has notified the responding State that the initiating State has closed its case under § 303.7(c)(11)."

In response to comments, paragraph (b)(14) adds a case closure criterion under which the responding State is authorized to close its intergovernmental case based on a

notice from the initiating agency that the responding State's intergovernmental services are no longer needed.

For consistency with the language in § 303.11(b)(12), which allows a State IV-D agency to close a case if the IV-D agency documents failure by the initiating agency to take an action which is essential for the next step in case processing, there is a technical change to § 303.11(c) to substitute the word "intergovernmental" for "interstate" and "initiating agency" for "initiating State." Since § 303.11(b)(12) may be used in both intergovernmental cases received from Tribal IV-D programs and other countries, the requirement for pre-notice of closure applies to these cases as well. Therefore, the case closure notice that responding States must give if they intend to close a case under § 303.11(b)(12) must be provided to all initiating agencies, and the responding State must keep the case open if that initiating agency supplies useable information in response to the notice.

Part 305—Program Performance Measures, Standards, Financial Incentives, and Penalties

Section 305.63—Standards for determining substantial compliance with IV-D requirements

We have made conforming changes to Part 305 at § 305.63 to correct outdated cross-references and to revise cross-references to § 303.7.

Part 308—Annual State Self-Assessment Review and Report

Section 308.2—Required program compliance criteria

We have made conforming changes to Part 308 at § 308.2 to correct outdated cross-references and to revise cross-references to § 303.7. The language in paragraph (g)

has been revised to reflect the corresponding changes to referenced provisions in § 303.7, and we also added two new program compliance criteria for State Self-Assessments.

First, there is a performance criterion for both initiating (§ 308.2(g)(1)(vi)) and responding (§ 308.2(g)(2)(vi)) cases under which, in accordance with the time frame under § 303.7(a)(6), the initiating and responding State IV-D agencies must, within 30 working days of receipt of a request, provide: "any order and payment record information requested by a State IV-D agency for a controlling order determination and reconciliation of arrearages, or notify the State IV-D agency when the information will be provided." The phrase: "or notify the State IV-D agency when the information will be provided," was added in response to comments.

A second new performance area involves case closure criteria. As discussed previously under § 303.7 and § 303.11, there are time-measured requirements for notification of the other State when closing a case. Measurable performance criteria are established where we impose time frames. Accordingly, we add notification regarding case closure in both initiating (§ 308.2(g)(1)(iv)) and responding (§ 308.2(g)(2)(vii)) cases.

IV. Response to Comments

We received 25 sets of comments from States, Tribes, and other interested individuals. Below is a summary of the comments and our responses.

General Comments

1. Comment: One commenter pointed out that the acronym SCR is used for both State Case Registry and State Central Registry in the NPRM.

Response: OCSE agrees that using the same acronym for two different terms in the preamble is confusing. Typically we use the acronym SCR to stand for State Case Registry. The final rule text does not use an acronym for either term.

2. Comment: The same commenter also raised concern about the lack of recourse for States that are trying to process intergovernmental cases when other States are not meeting mandated processing deadlines. The commenter suggested that OCSE add a § 303.7(f) to the intergovernmental regulation to set out responsibilities for the Federal Government to help States resolve complex intergovernmental case issues.

Response: OCSE acknowledges that intergovernmental case processing can be challenging and is concerned that some States may not be meeting processing deadlines. A procedure currently exists for States to work with OCSE in situations where they may need assistance resolving intergovernmental case issues with other States. The current procedure allows States to contact their Federal regional program manager, report the issue and then work with the program manager and other State to resolve the issue. In addition, case closure regulations under § 303.11(b)(12) offer responding States the option to close cases without permission from the initiating agency by documenting lack of cooperation by the initiating agency. This criterion was devised so that responding States would have grounds to close unworkable cases, provided the 60-calendar-day notice is given to the initiating agency, as required under § 303.11(c). Also the

responding State should make a thorough, good faith effort to communicate with the State before initiating case closure procedures.

3. Comment: In the preamble to the NPRM, OCSE specifically requested feedback from States regarding other communication techniques for interstate case processing that would work as well as or better than the Child Support Enforcement Network (CSENet) to foster improved communication between States. In response, one commenter suggested that OCSE encourage more States to adopt Query Interstate Cases for Kids (QUICK) to improve interstate case processing communication.

Response: OCSE agrees that QUICK, an electronic communication format that allows caseworkers to view interstate case information in real time, can be an important interstate communication tool and encourages State use. As of November 2009, 21 States are in production with QUICK, 10 States are in the development phase, and more States are in the pre-development stage. These numbers demonstrate that many States recognize the benefits of utilizing QUICK for interstate communications. OCSE will continue its outreach and technical assistance efforts to further encourage and support States' development of QUICK for their use.

4. Comment: The same commenter also suggested an enhancement to CSENet to allow States to include electronic documents in CSENet transactions.

Response: Electronic transmission of intergovernmental forms, court orders and other supporting documentation was assessed by OCSE within the last several years. While technically feasible, States' comments during this assessment process indicated that their statewide systems were not prepared to transmit those documents or that their courts would not accept those documents. OCSE will revisit this issue with States in 2010 when we review the intergovernmental forms as required by the Paperwork Reduction Act of 1995.

5. Comment: Another commenter suggested that OCSE add more CSENet functions, specifying that all States should have the same functions with correct information, such as telephone numbers, FIPS codes, and fax numbers.

Response: OCSE has encouraged States to develop programs for all CSENet functional areas for several years. We continue outreach efforts on an individual basis with States that do not have all seven functional areas (Quick Locate, Case Status Information, Enforcement, Managing State Cases, Paternity, Establishment and Collections) programmed. Finally, we continue to focus interstate meetings, training sessions and end-user support activities on efforts to improve data quality and accuracy of transaction content.

6. Comment: The same commenter asked that the Quick Locate CSENet transaction not be limited to the noncustodial parent.

Response: The parameter of Quick Locate was broadened after PRWORA to include noncustodial parents and custodial parents, and the existing Quick Locate transaction is used for both noncustodial parent and custodial parent location. OCSE will conduct outreach in this area to determine if the single transaction is meeting States' needs.

7. Comment: One commenter suggested that OCSE develop a secure network that would allow States to send electronic documents to another State via the internet, similar to the way documents are filed electronically with the courts. The commenter said that this would allow States to accept referrals electronically and save on postage and worker time. Alternatively, the commenter suggested States obtain email encryption software and be able to certify that their emails are encrypted, thus allowing States to communicate case processing information by email correspondence and document exchange.

Response: OCSE does encourage email encryption and secure networks, including Internet-based solutions to facilitate electronic communications and to protect personally identifiable information. OCSE is considering providing the capability for States to electronically transmit documents to other States using the Federal Parent Locator Service (FPLS). As enhancements are made to FPLS systems, OCSE will continue to partner with States for input and pilot activities.

8. Comment: One commenter noted that while he knows of nothing better than CSENet for communications, the Interstate Data Exchange Consortium (IDEC), a group of States

whose common objective is to pool resources to provide cost-effective solutions for interstate and intrastate child support issues, has also been very useful for processing transactions such as Automated, High-Volume Administrative Enforcement in Interstate Cases (AEI). IDEC is also effective for processing locate requests because it includes Social Security numbers, addresses, employment history, and demographic information. According to the commenter, however, IDEC is limited by the number of States that subscribe.

Response: OCSE agrees that consortia such as IDEC can be very useful, especially in processing requests for functions such as limited service requests, which cannot be processed using most statewide automated systems. However, since there are competing State consortia, OCSE cannot promote one group over another.

9. Comment: One commenter expressed that she had hoped the intergovernmental NPRM would have taken a stronger position on requiring States to adopt processes to accept electronic documents and signatures, noting that her State has made extraordinary progress in the area of electronic documentation, which has resulted in greater efficiency. The commenter believes that some States will never adopt electronic processing unless required to by OCSE.

Response: OCSE appreciates the comment and commends the innovation of the commenter's State. As discussed later in this section, while OCSE encourages all States

to adopt electronic capabilities, OCSE has not mandated this because of the varying capabilities among IV-D agencies.

10. Comment: One commenter was concerned that the changes in terminology in the proposed regulation, such as using "intergovernmental" instead of "interstate" and adding the terms Tribal and international, will require numerous changes to forms and procedural manuals used by the States.

Response: OCSE is sympathetic to the commenter's concern that some changes to State forms and procedures may be necessary following publication of this rule. However, OCSE notes that current mandatory intergovernmental forms already use many of these terms. OCSE also believes that these terms accurately state specific requirements in the new intergovernmental rule and believes States will, as a result of these changes, be able to process intergovernmental cases more efficiently. OCSE will allow adequate time for States to make needed changes to their internal manuals and forms by extending the effective date of the final rule from the usual 60 days to 6 months after publication.

11. Comment: In regard to the background section addressing "Tribal IV-D and International Child Support Enforcement" in the preamble of the proposed rule, one commenter asked for clarification that, in the context of discussion about the "States" ratifying the Hague Convention for the International Recovery of Child Support and Other Forms of Family Maintenance, the term State refers to countries and that individual U.S. States will not sign the convention.

Response: In the context of the Hague Convention, the U.S. Government and other foreign countries sign the treaty. The term "State" in the context of the treaty does not refer to individual U.S. States. In the preamble to the final rule, we used the term "foreign country" instead of "State" for clarity.

12. Comment: One commenter stated that the proposed rule violates the HHS consultation policy, since OCSE did not follow the requirements for Tribal consultation mandated by its own Department according to Executive Order 13175 Consultation and Coordination with Indian Tribal Governments, HHS Tribal Consultation Policy. The commenter believes the proposed rule may have enormous Tribal implications, and that now there can be no meaningful dialogue between Tribal governments and OCSE because the proposed rule has already been published. Finally, the commenter asked for clarification as to whether the proposed intergovernmental regulation applies to all Tribal child support enforcement programs or only to Tribal IV-D programs established under 45 CFR Part 309.

Response: This rule places no requirements on Tribal programs, IV-D or otherwise. The only Federal child support regulations that apply to Tribes are 45 CFR Part 309, Tribal Child Support Enforcement (IV-D) Program, and 45 CFR Part 310, Computerized Tribal IV-D Systems and Office Automation. 45 CFR Parts 309 and 310 apply only to Tribal IV-D programs.

One of the major reasons for revising the intergovernmental rule was to recognize and account for the increasing diversity of partners involved in case processing, including Tribal and international agencies. However, while these rules address State case processing requirements in this larger context, the rules themselves only apply to State IV-D agencies.

For example, if a Tribal IV-D program is the initiating agency and a State is a responding agency in an intergovernmental context, the intergovernmental rules for responding States under § 303.7(d) apply to the State, while the rules for initiating States under § 303.7(c) do not apply to the Tribal IV-D program.

13. Comment: One commenter asked for clarification as to which parts of the proposed rules apply to a State IV-D program's interactions with a Tribe and which ones apply to a State IV-D program's interactions with a Tribal IV-D program.

Response: Under the Federal statute and regulations, there is no mandate that States provide services to non-IV-D Tribes. However, as described below, if a State decides to cooperate with a non-IV-D Tribe to provide child support services, then the intergovernmental rules do apply to the State. Also, applicants who apply directly to a State program must be served by the State, regardless of where they live.

Part 301—State Plan Approval and Grant Procedures

Section 301.1—General definitions

While several commenters agreed with one or all of the proposed definitions in the General definitions section of § 301.1, most of those who commented expressed a variety of questions and concerns regarding specific definitions and terms.

1. Comments: In regard to the definition of Country, one commenter asked for confirmation that the term does not include countries with which no Federal or State-level reciprocal agreement exists; and that services to these countries are not mandated. The commenter asked to what extent the intergovernmental rule applies to those situations in which a State and a foreign country not included in the definition of Country in the regulation are cooperating to handle a shared case on the basis of comity as specified in UIFSA, or some other informal arrangement.

Response: The definition of Country does not include foreign countries with which no Federal or State-level reciprocal agreement exists; and IV-D services to these foreign countries are not federally mandated. However, if a State opts to cooperate with such a foreign country, as we understand is fairly routine, then the case becomes an intergovernmental IV-D case and this rule applies.

2. Comment: One commenter stated that proposed § 301.1 includes a referral requirement within the definition of an Initiating agency; however, the term Initiating agency also is used in the regulation to refer to an agency that takes unilateral action, such as direct income withholding. The commenter suggests that if the intent is to limit the initiating agency definition to those agencies that refer a case to the responding

agency, then another term and definition should be developed for those agencies that take unilateral action.

Response: OCSE did not intend to limit the definition of Initiating agency to only refer to agencies that have sent a case to a responding agency. The term is intended to include agencies that make case referrals as well as take unilateral actions, such as direct income withholding.

In order to define the term more accurately, OCSE changed the definition of Initiating agency in this final rule to emphasize the relationship of the applicant or recipient of services to the agency, rather than focusing on the referral from the agency to a responding agency. By changing the definition, the term is inclusive of whatever actions an agency may take to process a case. The revised definition for initiating agency now reads:

> "Initiating agency means a State or Tribal IV-D agency or an agency in a country, as defined in this rule, in which an individual has applied for or is receiving services."

In addition, this revised definition clarifies that State IV-D agencies must fulfill their responsibilities as initiating agencies under § 303.7(c) of the rules, particularly paragraphs (c)(1) through (3), even if no referral has been made to a responding agency.

3. Comment: The intergovernmental NPRM states that an Initiating agency, as defined, could include a State IV-D agency, a Tribal IV-D agency, or a country as defined by this rule. Responding agency is defined as "the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case." In regard to both definitions, one commenter asked why all Tribal agencies were not referenced. In addition, the commenter asked whether a State could have a reciprocal case with a Tribe that does not have a IV-D program.

Response: This rule applies only to State IV-D programs, and State IV-D programs are only required to provide services to other State IV-D programs, Tribal IV-D programs, and countries with Federal or state-level agreements, not to all Tribes. However, a State may choose to open a reciprocal case with a Tribe that does not operate a IV-D program, so long as the State complies with this rule.

4. Comment: A commenter asked if all Tribes are bound by FFCCSOA.

Response: Yes, all Tribes are bound by FFCCSOA, 22 U.S.C. §1738B. As explained in OCSE-AT-02-03: "FFCCSOA requires courts of all United States territories, states and tribes to accord full faith and credit to child support orders issued by another state or tribe that properly exercised jurisdiction over the parties and the subject matter." According to the Action Transmittal, "FFCCSOA defines "state" to include "Indian Country" as this term is defined in 18 U.S.C. section §1151. This means that whenever the term is used in [FFCCSOA], it includes tribe as well."

5. Comment: One commenter pointed out that in the definition for Form, the income withholding form is improperly referred to by its former title, "Order/Notice to Withhold Income for Child Support," rather than its new title, "Income Withholding for Support."

Response: The commenter is correct. Since publication of AT-07-07, the name of the income withholding form is "Income Withholding for Support." In the final rule, the definition of Form has been updated to reflect the correct title.

6. Comment: One commenter asked for clarification for the definition of "State" with regard to the new definitions for Intergovernmental IV-D case and Interstate IV-D case. The commenter stated that Section 101(19) of UIFSA 1996 defines "State" to include States and territories, Indian Tribes, and foreign jurisdictions that have "enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under [UIFSA], the Uniform Reciprocal Enforcement of Support Act (URESA) or the Revised Uniform Reciprocal Enforcement of Support Act (RURESA)." The commenter suggested OCSE address whether the term "State" in the definition of Interstate IV-D case retains the broad definition as defined by UIFSA or refers more narrowly to one of the United States or its territories only.

Response: For the purposes of the IV-D program, State is defined in § 301.1 as "the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa," and does not include Tribes or foreign

jurisdictions. Therefore, the definition of State in § 301.1 of this rule, and not the UIFSA definition, applies to the use of the term in the definition of Intergovernmental IV-D case and Interstate IV-D case in this rule.

7. Comment: One commenter believes that the proposed definition for Intergovernmental IV-D case leaves out cases in which the child has emancipated but the custodial and noncustodial parents live in different jurisdictions, and those cases in which a State is attempting to collect State debt from an obligor in another State. In these state-debt cases, the commenter said the State often does not know the location of the custodial parent or the child.

Response: We agree that there are cases in which the IV-D agency is only attempting to collect arrearages owed to the State, and therefore we have added the following additional sentence to the definition for Intergovernmental IV-D case: "An intergovernmental IV-D case also may include cases in which a State agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State." Since this scenario exists in interstate cases as well, we have added a similar sentence to the definition for Interstate IV-D case. For the final text of the definitions of Intergovernmental IV-D case and Interstate IV-D case, see the next comment.

8. Comment: One commenter asked what the differences are between an Intergovernmental IV-D case and an Interstate IV-D case.

Response: OCSE intended that the only distinction between an intergovernmental IV-D case and an interstate IV-D case was the type of jurisdictions involved: an interstate case involves States, while an intergovernmental IV-D case could involve any combination of referrals between States, Tribes or countries (as defined in the regulations). OCSE acknowledges that the NPRM definitions suggested another distinction between the terms: that an intergovernmental IV-D case required a referral to a responding agency, while an interstate case did not require a referral to another State. In response to this comment, OCSE revised the definitions to clarify that both terms include a referral requirement and that the only distinction is the kinds of jurisdictions involved in the case. To do this, we changed the first sentence of the definition of Intergovernmental IV-D case for consistency and clarity to more clearly follow the wording used in the first sentence of the definition of Interstate IV-D case.

Regarding the definition for Interstate IV-D case, we revised the second half of the first sentence to clarify that the term refers only to cases that have been sent by a State to a responding State.

The revised definitions for Intergovernmental IV-D case and Interstate IV-D case, which include these changes as well as the change from the previous comment, read as follows:

> "Intergovernmental IV-D case means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency

for services. An intergovernmental IV-D case may include any combination of referrals between States, Tribes, and countries. An intergovernmental IV-D case also may include cases in which a State agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State."

"Interstate IV-D case means a IV-D case in which the noncustodial parent lives and/or works in a different State than the custodial parent and child(ren) that has been referred by an initiating State to a responding State for services. An interstate IV-D case also may include cases in which a State is seeking only to collect support arrearages, whether owed to the family or assigned to the State."

9. Comment: One commenter observed that an Intergovernmental IV-D case is defined as a case where the noncustodial parent lives in a different jurisdiction from the child(ren), while an Interstate IV-D case is defined as a case where the noncustodial parent lives and/or works in a different State than the child(ren) and the custodial parent. The commenter asked why the former definition omits mentioning the custodial parent.

Response: As stated above, OCSE intended the only difference between intergovernmental and interstate cases to be that of the types of jurisdictions involved in a case. The status or any other features of the custodial and noncustodial parents or children, other than the jurisdictions where they may live or work, does not impact whether the case falls under the interstate or intergovernmental definition.

10. Comment: One commenter was concerned that the definition of Interstate IV-D case is too far-reaching. The commenter asked OCSE to consider, for example, the scenario in which a custodial parent living in Minnesota applies for IV-D services in North Dakota because the noncustodial parent is living and working in North Dakota and the support order was issued in North Dakota. Under the proposed definition, this would be considered an interstate IV-D case merely because the parties live in different States. However, this case would have no interstate implications – e.g., enforcement would occur in North Dakota according to North Dakota law, North Dakota would have continuing exclusive jurisdiction for purposes of review and adjustment, and the State would not treat this case as an interstate case for purposes of OCSE-157 reporting. The commenter is concerned that applying the definition of Interstate IV-D case to such a case could have unforeseen and unintended consequences.

Response: As noted above, the definition for Interstate IV-D case has been revised in the final rule to pertain only to cases that have been referred for services from one State to another State. According to the revised definition, Interstate IV-D case does not include a case that is being processed by an initiating agency using one-state actions nor does it include a case that involves an applicant from one State applying directly for services in another State, as described in the commenter's scenario.

The revised definition for Interstate IV-D case now aligns with the instructions for reporting interstate cases on Form OCSE-157, "Child Support Enforcement Annual Data

Report." The instructions for Form OCSE-157 describe interstate cases as those cases either "sent to another state" or "received from another state."

11. Comment: OCSE welcomed comments on whether the proposed definition of One-state interstate IV-D case is helpful, and if so, appropriate and sufficient. While we received one comment in support of the proposed definition of One-state interstate IV-D case, we received two comments in opposition to the definition, and approximately a half-dozen comments asking for clarification.

The commenters in opposition believe the term is not useful, especially in the broader context of interstate case processing and as included in the proposed definition of the term Interstate IV-D case. One commenter explained that the word interstate is commonly understood to mean "between" or "among" States, so that combining "interstate" and "one-state" in the same term is fundamentally problematic. The commenter felt that the definition for Interstate IV-D case should be limited to those cases where there has been a referral from one State IV-D program to another and that the one-state concept should not be included in the regulation. Another commenter disagreed with the use of the term "long-arm" in the proposed definition, while another pointed out that the definition could be read to apply to any case with a parent outside the State's borders, not just in another State.

Response: While the concept and use of the term One-state interstate IV-D case has grown over the last twenty years, OCSE notes that inclusion of the definition in this rule

may have generated confusion. As a result, we have removed the definition of One-state interstate IV-D case from the regulation, and added the definition for One-state remedies. In addition, as noted above, we revised the definition of Interstate IV-D case so that it no longer includes the concept of one-state interstate. Proposed § 303.7(c)(3) also was modified to use the term One-state remedies. See discussion of the comments on proposed § 303.7(c)(3) below. In the final rule, One-state remedies means "the exercise of a State's jurisdiction over a non-resident parent or direct establishment, enforcement, or other action by a State against a non-resident parent in accordance with the long-arm provision of UIFSA or other State law."

12. Comment: Several of the comments on the proposed term One-state interstate case asked for clarification in regard to reporting on the Form OCSE-157, "Child Support Enforcement Annual Data Report." The commenters asked whether such cases should be reported as interstate cases or local cases on Form OCSE-157. One commenter asked if OCSE would be creating a new reporting category for these kinds of cases.

Response: OCSE will not create a new case type for reporting requirements associated with a State's use of One-state remedies. In reporting on Form OCSE-157, States should only consider the reporting instructions included on the form.

13. Comment: One commenter asked if one-state interstate cases should be treated as local cases or interstate cases in terms of case processing requirements.

Response: In general, cases that involve one-state remedies should be treated as local cases. Only when a State makes a referral for services to another jurisdiction, turning the case into an interstate or intergovernmental case, must the State follow the intergovernmental case processing rules under § 303.7.

OCSE reminds States that the first three requirements for initiating State agencies under § 303.7(c) apply to States that may ultimately use a one-state approach on a case. These requirements describe the pre-referral steps an initiating State takes to decide how and whether to determine a controlling order and whether or not the State will employ a one-state strategy or refer the case. Once the State decides to process the case using one-state remedies, the rest of the responsibilities under this section do not apply, and the State would process the case under regular case processing rules.

14. Comment: One commenter was concerned that the proposed definition of Tribunal, "a court, administrative agency, or quasi-judicial entity authorized under State law to establish, enforce, or modify support orders or to determine parentage," did not allow States the option to choose the entity to serve as their Tribunal, as provided under Section 103 of UIFSA 1996 and 2001.

Response: OCSE believes that the phrase "authorized under State law" in the definition of Tribunal affords the States the same flexibility to choose the entity to serve as their Tribunal as provided under UIFSA. Therefore, we have not changed the definition in the final rule.

Part 302—State Plan Requirements

Section 302.36—Provision of Services in Intergovernmental IV-D Cases

1. Comment: While OCSE received a couple of comments in support of the changes to § 302.36, one commenter stated that his State's automated system is not equipped to add Tribal cases and does not have Tribal FIPS codes, etc. The commenter wondered if this would be a problem for other States as well.

Response: OCSE has given States several years notice about the requirement to start reporting Tribal and international cases. Form OCSE-157, "Child Support Enforcement Annual Data Report," as revised on September 6, 2005 by AT-05-09, requires States to report intergovernmental cases shared with Tribal IV-D programs (and with other countries) by October 30, 2009. In addition, DCL-08-35 reminded States to collect case data on Tribal and international cases for Fiscal Year 2009, in addition to collecting several other new categories of data. FIPS codes for use with Tribal and International cases are described in DCL-07-02 and DCL-08-04.

Part 303—Standards for Program Operations

Section 303.7—Provision of Services in Intergovernmental IV-D Cases

Section 303.7(a)—General responsibilities

Section 303.7(a)(4)—Mandatory use of federally-approved forms

1. Comment: One commenter indicated that some countries provide the forms they require in A Caseworker's Guide to Processing International Cases. The commenter

went on to ask if States should use the forms in A Caseworker's Guide to Processing International Cases.

Response: We believe it is appropriate for a State to use forms provided by a country in a chapter of A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries. As a result, we have revised § 303.7(a)(4) to include this authority.

2. Comment: Several commenters appreciated the change under proposed § 303.7(a)(4) to require agencies to send only one copy of each federally-approved form in a case to the other jurisdiction. However, commenters noted that this change potentially conflicts with UIFSA (1996) and (2001). Section 304 of UIFSA (1996) requires agencies to send three copies of the petition. Section 602(a)(2) of UIFSA (2001) requires agencies to send two copies of the order to be registered, including a certified one.

Another commenter also suggested clarifying our terminology by referring to the forms as a "complete set of required forms" rather than as "copies" of forms, since at least some of the forms may be originals.

Response: In response to comments, OCSE notes that the required number of copies of forms and/or supporting documents will depend not on the initiating agency but on the needs of the responding agency receiving the forms. While OCSE's intent was to shift the burden of making copies onto the responding agency, we acknowledge UIFSA's

requirements and have decided to change the rule to reduce confusion. We also agree with the request to clarify terminology and not use the word "copies."

In response, we have changed § 303.7(a)(4) to read: "When using a paper version, this requirement is met by providing the number of complete sets of required documents needed by the responding agency, if one is not sufficient under the responding agency's law."

Section 303.7(a)(5)—Use of electronic transmission

1. Comment: With respect to section § 303.7(a)(5), which requires State IV-D agencies to transmit requests for information and provide requested information electronically to the greatest extent possible, one commenter indicated that there are many ways to electronically transmit requests and provide information and expressed concern that use of the phrase, "in accordance with instructions issued by the office" is redundant and can be confusing.

Response: Issuance of instructions is discretionary for the Federal government; however, we agree that the language is not necessary. We have removed the language from the regulation.

2. Comment: One commenter indicated that the commenter's State cannot accept a new case without a paper copy of the forms. Another commenter asked that OCSE consider stating in this rule more explicitly, and any future proposed rules where electronic

transactions and/or case records are referenced, that automated transactions may or may not be accompanied by paper documents and that the lack of paper documentation for an automated transaction is an expected and allowable occurrence.

Response: OCSE recognizes that all State systems do not function at the same level of automation, which is why we reiterate that electronic submission is encouraged, but not mandatory. Whether or not the lack of paper documentation for an automated transaction is allowable depends on whether or not the receiving State can accept electronic transmissions. Some States are not as advanced in this area as other States; however, cases should be worked to the greatest extent possible based upon the electronic information received.

Section 303.7(a)(6)—Providing order and payment record information upon request

1. Comment: OCSE asked for comments on the proposed 30-day time frame within which a State IV-D agency must provide order and payment information as requested by a State IV-D agency for a DCO and reconciliation of arrearages. Several commenters supported increasing the timeframe to 60 days; however, there was an equal amount of support expressed for keeping the time frame at 30 days with the option to notify the initiating State if there is a delay.

Response: Thirty working days is the equivalent of six weeks, which, in most cases, should be a sufficient amount of time to provide any order and payment record information requested by a State IV-D agency. However, we have added an option in

section § 303.7(a)(6) to notify the State IV-D agency when the information will be provided if there is a delay.

Section 303.7(a)(7)—Providing new information on a case

1. Comment: One commenter requested that OCSE provide clarification on the definition of "new information."

Response: We encourage initiating States to send new information that is needed and necessary for the responding State to establish or manage the interstate case, including data necessary to process or take action on the case. If it is information that a State would find valuable in managing an intrastate case, then it is probably information that the responding State also would find helpful. If the noncustodial parent already has been identified and has a verified Social Security Number (SSN), then it is not necessary to send that information because it is not new information. Similarly, a responding State should send new information about a case that would assist the initiating State in responding to customer service inquiries.

Section 303.7(a)(8)—Provision of limited services upon request

1. Comment: In regard to 45 CFR 303.7(a)(8), which requires State IV-D agencies to cooperate in the provision of certain limited services, one commenter suggested that OCSE include the requirement that States provide the same legal representation to an initiating State that would be available to the responding State's IV-D agency in intrastate litigation.

Response: We do not agree that we should specifically address legal representation, because States handle contested issues differently and it would be inappropriate to create a mandate in such circumstances.

2. Comment: One commenter indicated that the requirement for State IV-D agencies to respond to requests for the specified limited services in § 303.7(a)(8) will cause a major impact on automated systems modifications. The commenter also stated that the requirement will require "pseudo" cases that are only on State systems for a specific service or limited assistance to a requesting agency, and these cases would not be counted as cases in any statistics or management reporting.

Response: With the evolution of the IV-D program and authority for States to take action across State lines, the provision of limited services is fairly common. States currently perform limited services; e.g., quick locate and service of process in intergovernmental child support cases. While the performance of limited services upon request is required, a modification to a statewide IV-D system is not mandated. OCSE recognizes that some statewide IV-D systems have difficulty accepting and processing limited service requests. Some States do utilize pseudo cases, while others process these requests outside of the statewide automated systems using outside consortia (e.g., IDEC, the Michigan Financial Institute Data Match Alliance). While it is true that these activities would not be counted as cases on any statistics or management reporting, the

provision of limited services is addressed in UIFSA, is a common State practice, and is reciprocal.

3. Comment: One commenter asked if "limited services" only refers to the ones listed in § 303.7(a)(8), and if so, should § 303.7(a)(8) be changed to read: "Cooperate with requests for limited services (quick locate, service of process, assistance with discovery, teleconferenced hearings, administrative reviews, and high volume automated administrative enforcement) in interstate cases under section 466(a)(14) of the Act." The commenter also asked, if "limited services" includes more than those listed in § 303.7(a)(8), can an initiating State ask another State to take only specific actions, such as initiate contempt of court proceedings, income withholding orders, or license sanction, while the initiating State handles all other enforcement activity?

Response: Yes, in response to this comment, the final rule includes a list of limited services in § 303.7(a)(8) that are mandatory. In addition, language was added to allow a State to provide other types of limited services, if requested by an initiating agency. (Please see the revised requirement below.) It would be inappropriate to include an open-ended mandate and we believe that the listed services are those that can most often be provided by State IV-D agencies upon request. In addition, an initiating agency may not direct a responding State IV-D agency to take specific actions in an intergovernmental IV-D case; that determination is up to the responding State IV-D agency.

4. Comment: One commenter recommended that the definition of limited services in proposed section 303.7(a)(8) be expanded to include review and adjustment, because there are some instances in which the appropriate jurisdiction for adjustment is not the enforcing State, and some States are reluctant to perform the necessary review and adjustment action without taking over the enforcement as a two-State interstate case.

Response: Most State child support automated systems do not have the capability of providing a single service or doing just one function. A State can provide the locate, financial, and asset information without opening a full case on the system, but very few have the capability of completing the entire review and adjustment function without establishing a full case on its automated system. Limited services are activities that an initiating agency requests a State IV-D agency to perform to assist the initiating agency in establishing, adjusting, or enforcing a child support order. We are concerned about adding this provision in the final rule without having provided States the opportunity to comment on its inclusion in advance. In addition, the provision in § 303.7(a)(8) gives States the option to honor requests for other limited services that are not listed. Under that provision, if a State is willing and able to honor a request for a review and adjustment, it may do so. Therefore, we do not agree that it is appropriate to add a request for review and adjustment of an order to the list of required limited services.

5. Comment: One commenter suggested that § 303.7(a)(8) include requests for court orders and payment records as a limited service.

Response: Section 303.7(a)(6) requires States to provide a copy of the payment record and a support order, thus we added requests for copies of orders and payment records to the list of limited services to § 303.7(a)(8).

In response to all of the above comments, § 303.7(a)(8) now reads as follows: A State IV-D agency must "Cooperate with requests for the following limited services: quick locate, service of process, assistance with discovery, assistance with genetic testing, teleconferenced hearings, administrative reviews, high-volume automated administrative enforcement in interstate cases under section 466(a)(14) of the Act, and copies of court orders and payment records. Requests for other limited services may be honored at the State's option."

6. Comment: A commenter also suggested that State IV-D agencies have agreements with their courts to provide a copy of the court order to other States at no cost.

Response: While we encourage States to work with their courts to provide copies of orders at no cost, we do not believe it is appropriate to remove States' discretion to recover costs.

Section 303.7(b)—Central Registry

Section 303.7(b)(1)—Establishment of State Central Registry

1. Comment: In regard to the requirement under § 303.7(b)(1) for State IV-D agencies to establish a central registry responsible for receiving, transmitting, and responding to

inquiries on intergovernmental IV-D cases, one commenter asked if case information should go directly into the statewide automated system rather than through the State Central Registry. The commenter also asked for specific guidance on how case information should be processed on statewide systems, for example, if the system needed to be able to "flag" a case pending review by State staff or if the system could require a certified copy of an order.

Response: According to OCSE statewide systems requirements, all State Central Registry functions must be integrated into the statewide system. Therefore, when an initiating agency sends an intergovernmental case to a responding State, the data will transmit to both the responding State's statewide system and the State Central Registry, although the State must have procedures so that it is the State Central Registry that initially processes the new case, as required by § 303.7(b)(1). OCSE does not mandate how States should integrate State Central Registry functions with their statewide system functions, so States will have different approaches. In addition, OCSE does not mandate how States develop their case processing workflows with respect to their systems. OCSE, for example, does not require that a statewide system be able to "flag" a case pending review by State staff or that documents such as certified copies of orders be in hard copy. States determine these issues.

2. Comment: One commenter requested clarification that OCSE is not mandating that responding jurisdictions accept electronically transmitted cases from initiating jurisdictions in lieu of mailing cases to the State Central Registry. The commenter

referenced the Electronic Signatures in Global and National Commerce Act (ESIGN) (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ229.106), saying the law gives electronic signatures the same legal effect as written signatures. However, the commenter indicated that the law only sets a baseline standard for what is required in an electronic signature. The commenter was concerned that many jurisdictions do not have the technical ability to accept electronic signatures and would be unable to process electronic transmissions if mandated.

Response: As we indicated above in the discussion of the general responsibility for States to transmit and provide information electronically to the greatest extent possible under § 303.7(a)(5), electronic transmissions, including electronic signatures, are encouraged, but not mandated. The initiating agency must provide the responding agency with the information that it needs in the format that is acceptable to the responding agency. Nevertheless, OCSE reiterates that electronic transmissions will be an increasingly important tool for doing business and encourages jurisdictions to adopt new technologies. (See PIQ-09-02, http://www.acf.hhs.gov/programs/cse/pol/PIQ/2009/piq-09-02.htm)

Section 303.7(b)(2)—Initial required activities upon receipt of a case

1. Comment: Section 303.7(b)(2) requires State Central Registries to complete several tasks within 10 working days of receipt of an intergovernmental case, including reviewing documentation for completeness, forwarding the case for action either to the

State Parent Locator Service or another agency for processing, acknowledging receipt of the case or requesting missing documentation, and informing the initiating agency where the case was forwarded.

In regard to § 303.7(b)(2), several commenters requested more guidance on requirements to open and close cases when the initiating agency does not provide complete information. One commenter asked for clarification regarding whether the regulation required States to open cases based on the CSENet transaction alone, especially in the absence of complete case information or paper documents. Another commenter was concerned that agencies would send only CSENet transactions without following up with required documents such as certified copies of court orders.

Response: In general, while the CSENet application is often used to request services on intergovernmental cases, some of the forms, such as the General Testimony Form, must be sent in a paper format. When sending a request for services through CSENet, the initiating State must indicate whether attachments in a paper format are to follow. Upon receipt of a CSENet transaction, OCSE guidance has always been that if a State can proceed without the paper documents, it should move forward. If the State determines that critical information is missing, it will notify the initiating agency that documents are missing and forward the case for any action that can be taken pending necessary action by the initiating agency.

In order to clarify that it is the initiating State's responsibility to provide information and documentation in the format required by the responding agency, we have changed the initiating State responsibility under § 303.7(c)(5). This responsibility now reads: the initiating State IV-D agency must: "provide the responding agency sufficient, accurate information to act on the case by submitting with each case any necessary documentation and intergovernmental forms *required by the responding agency*" (emphasis added). This change addresses the commenters' concern that initiating agencies would not follow-up with documentation in paper format, in the instances where the responding State requires that format.

OCSE encourages States to work with each other to ensure the transfer of case information is efficient and meets mutual needs. Further, we encourage States to work with OCSE on continuing to develop CSENet capabilities to meet those needs with even greater effectiveness.

Section 303.7(b)(3)—Forwarding the case for action

1. Comment: Thirteen commenters responded to OCSE's specific request for input on the pros and cons of the current central registry requirement "to forward the case for any action that can be taken pending necessary action by the initiating agency," in proposed § 303.7(b)(3).

Eight commenters supported the current rule, saying that forwarding the case is more efficient for the central registry and for case processing, ultimately resulting in support

reaching children faster. Commenters said that local offices often are better able to judge if the case can be processed even with partial information, preventing workable cases from being put on hold only for technical reasons. This is particularly significant if a case has been referred for two distinct activities. By forwarding the case, caseworkers can proceed with one activity even as they await necessary information to move forward with the other activity. One commenter noted how being able to pass along cases to local offices as soon as they are entered onto the automated system reduces the burden on the central registry, which is not equipped to manage this process, since its resources are focused on meeting the Federal time frames associated with otherwise reviewing and acknowledging incoming cases.

Five commenters objected to the requirement, saying that if the initiating agency never provides the missing or incomplete information, forwarding the case would be a waste of time and resources. One commenter suggested that the rule be revised to leave the decision of forwarding cases pending receipt of complete information from the initiating agency to the discretion of the States, which could base the decision on the size of their central registries.

Response: We agree with the majority of the comments in support of keeping the requirement in § 303.7(b)(3), for central registries to forward the case for any action that can be taken pending necessary action by the initiating agency if the documentation received with a case is incomplete and cannot be remedied by the central registry without the assistance of the initiating agency. As a result, this requirement will remain the same.

2. Comment: Several commenters asked for clarification on the minimum amount of information that would be required for a central registry to open an incoming case, perhaps provided as a checklist of required documents or data elements. In addition, one of these commenters also requested that the corresponding authority be authorized to reject cases not meeting a standard threshold of information or documentation. One commenter suggested that the central registry be allowed to "return" a case within 60 days under case closure criterion § 303.11(b)(12), which allows for case closure if the initiating agency fails "to take an action which is essential for the next step in providing services."

Response: As stated above, a State Central Registry is required to complete the activities described in § 303.7(b)(2), (e.g., ensure documentation has been reviewed, forward the case for action to either the State Parent Locator Service or the appropriate agency) within 10 working days of receipt of an intergovernmental IV-D case. As part of this process, under § 303.7(b)(2)(i), the central registry determines, on a case-by-case basis, whether it is in receipt of complete documentation in the required format in order to proceed with the case. Because each case and the information sent with each case by the initiating agency is different, we believe it would be inappropriate to establish a checklist or a minimum standard of required information without which central registries could reject or return cases.

OCSE does not want States to approach intergovernmental case processing with the notion that incoming cases can be rejected or returned. The intent of this rule is to surmount barriers to intergovernmental case processing with the ultimate goal of providing support to children as soon as possible. However, if the central registry documents the failure by the initiating agency to take an action essential for the next step in providing services, the State would have grounds to close the case under § 303.11(b)(12), as long as the required notice of potential closure under § 303.11(c) is provided to the initiating agency.

3. Comment: In a related comment, a commenter requested clarification on the time frame for case closure for the failure of the initiating agency to act in response to requests for more information under § 303.11(b)(12), noting that the time frame policy on this case closure criterion varies widely among States.

Response: While there is no designated timeframe for how long a responding State IV-D agency must wait for information from an initiating agency before starting case closure actions under § 303.11(b)(12), we encourage States and agencies to work together so as not to initiate case closure proceedings prematurely.

Under § 303.7(c)(6), when an initiating State is in receipt of a request for case information from a responding agency, the initiating State has 30 calendar days to provide the information or to give notice as to when it will provide the information. If those 30 calendar days elapse with no response from the initiating agency, OCSE

strongly encourages the responding State to follow-up with the initiating agency rather than automatically proceeding with case closure.

In addition, according to case closure rules stated in § 303.11(c), in order for a responding State to close a case for the failure of an initiating agency to take action pursuant to § 303.11(b)(12), the State must notify the initiating agency in writing 60 calendar days before closing the case.

4. Comment: One commenter also would like to be able to reject a case where there is no recently verified address or there does not appear to be a relationship between the obligor and the responding State.

Response: Sending a verified address is not a pre-requisite to forwarding a case for action to another jurisdiction. As stated previously, a State is required to start the activities described under § 303.7(b)(2) (e.g., ensure documentation has been reviewed, forward the case for action to either the State Parent Locator Service or the appropriate agency) as soon as its central registry is in receipt of an intergovernmental IV-D case. If the relationship between the obligor and the State is not evident, States should request additional information from the initiating State to clarify the link.

5. Comment: One commenter asked for clarification of the responding State's responsibility to continue to perform locate activities as it would for an in-state case (three years if there is a verified SSN) even if the initiating agency cannot provide a

recently verified address. The commenter noted that States that have strict requirements for current locate information on the noncustodial parent before they begin work on the case may close the case too quickly. The result is that the initiating agency has to make a second referral by the time the requested information is available, wasting time and resources.

Response: As noted above, sending a verified address is not a prerequisite to forwarding a case for action to another jurisdiction. In general, the initiating agency, not the responding State, decides whether to open or close an intergovernmental case. A responding State may not apply case closure criteria under § 303.11(b)(1) through (11), or any other criteria, to close intergovernmental cases unilaterally. In order for a responding State to close an intergovernmental case without permission from the initiating agency, the responding State must document lack of cooperation by the initiating agency, as required under § 303.11(b)(12), and provide a 60-calendar-day notice to the initiating agency, as required by § 303.11(c).

Case closure rules at § 303.11(b)(4) establish time frames for closing a case if the noncustodial parent's location is unknown. The time frames are three years when there is sufficient information to initiate an automated locate effort or one year when there is insufficient information to perform automated location services. These time frames are applicable in the intergovernmental context. Even in the absence of a recently verified address, a responding agency can perform location services. For example, a State can perform automated location services with minimal data, such as a date of birth and name

or a Social Security number and name. Please see the additional discussion of case closure requirements later in this section.

6. Comment: In proposed § 303.7(b)(3), if the documentation received with a case is inadequate and cannot be remedied by the central registry without the assistance of the initiating agency, the central registry must forward the case for any action that can be taken pending necessary action by the initiating agency. One commenter recommended substituting the word "incomplete" for "inadequate" when describing the problematic documentation because, by definition, inadequate documentation is insufficient for its intended purpose.

Response: We agree with the commenter and substituted "incomplete" for "inadequate" in the regulatory language at § 303.7(b)(3) and, correspondingly, in § 303.7(d)(2)(iii), which uses the same word.

Section 303.7(b)(4)—Responding to case status inquiries

1. Comment: The provision under § 303.7(b)(4) requires the central registry to "respond to inquiries from initiating agencies within five working days of receipt of the request for a case status review." One commenter expressed agreement with the time frame, while another commenter felt that 10 working days would be more appropriate. Two commenters suggested that this requirement be moved to § 303.7(d), as a responding State responsibility.

Response: This requirement has been in effect since interstate regulations were implemented at § 303.7 in 1988. As we indicated in 1988, the requirement for central registries to respond to inquiries from other States is intended for situations in which an initiating agency loses track of a case or is unable to determine whether any action is being taken on a case. Inquiries to the central registry should, therefore, be limited to instances where direct contact between the initiating agency and the responding State IV-D agency is ineffective or impossible. In regard to the time frame, OCSE does not have enough evidence to suggest that five working days is insufficient for this requirement; therefore, the time frame is unchanged.

Section 303.7(c)—Initiating State IV-D agency responsibilities

Section 303.7(c)(1)—Identifying whether there are multiple orders in a case

1. Comment: Section 303.7(c)(1) requires initiating State agencies to "determine whether or not there is a support order or orders in effect in a case using the Federal and State Case Registries, State records, information provided by the recipient of services, and other relevant information available to the State."

One commenter asked if initiating States, in fulfilling their responsibility for determining whether there is a support order or orders in effect in a case, would be required to use their statewide automated systems.

Response: There is no explicit requirement for States to use their statewide automated systems to determine whether there is a support order or orders in effect for a case. States

are required to use Federal and State case registries, State records, information provided by recipients, and other available information to determine whether there is a support order or orders in effect.

2. Comment: One commenter stated that the determination of controlling order may be made by any forum that has personal jurisdiction over the necessary individual parties and does not have to be a tribunal that has issued a support order. The commenter went on to say that UIFSA section 207(b)(3) contemplates that this may be a State that has not issued an order as it requires that a tribunal issue its own replacement order when all parties have left all of the States that have issued orders as part of the determination of controlling order process. According to the commenter, § 303.7(c)(2) provides the flexibility needed by the initiating agency to select the State to determine the controlling order and reconcile the arrears when multiple orders exist, including a State that has not issued a support order. The commenter asked that OCSE revise the commentary to not restrict the initiating State's selection of the DCO State to only a State where that State's tribunal issued a support order.

Response: OCSE agrees that when ascertaining in which State(s) a determination of controlling order may be made, an initiating agency is not limited to those tribunals that issued one of the support orders. UIFSA 2001 clarifies that a tribunal must have personal jurisdiction over both the obligor and individual obligee when determining which of the multiple orders is the controlling order. Section 302.7(c)(2) requires an analysis of what

jurisdiction or jurisdictions have or may obtain personal jurisdiction over both individuals and the selection of the forum if there is an option to proceed in more than one State.

Section 303.7(c)(2)—Determination of appropriate State to make DCO

1. Comment: Under § 303.7(c)(2), an initiating State agency must: "determine in which State a determination of controlling order and reconciliation of arrearages may be made where multiple orders exist." One commenter said that a determination of controlling order is only necessary when there are multiple orders that also are "valid" orders. The commenter explained that since the effective date of FFCCSOA on October 20, 1994, there are fewer and fewer cases with legitimate multiple orders. Rather, additional orders issued since FFCCSOA are void. The commenter asked OCSE to clarify this point and to remind States to make sure orders are "valid" before pursuing a determination of controlling order.

Response: Section 303.7(c)(1) requires initiating State IV-D agencies to identify existing support orders. Section 303.7(c)(1) does not require initiating State IV-D agencies to decide on their validity under FFCCSOA. In cases involving multiple orders, the initiating State IV-D agency must determine which State should determine the controlling order. Once the State makes this determination, the State must "ask the appropriate intrastate tribunal or refer the case to the appropriate responding State IV-D agency, for a determination of the controlling order and a reconciliation of arrearages" as required in § 303.7(c)(4)(i). The tribunal within the State or in the responding State IV-D agency will address the issue of validity at that point.

2. Comment: One commenter stated that § 303.7(c)(2) indicates that the proper tribunal to make a determination of controlling order is the tribunal that is able to obtain personal jurisdiction over both the obligor and obligee; however, the rule does not address what the procedure should be if no tribunal is able to obtain personal jurisdiction over both parties, which will often be the case in intergovernmental cases.

Response: The commenter is correct that a tribunal requires personal jurisdiction over both parties to make a DCO. If neither the issuing nor initiating State has personal jurisdiction over both parties because the initiating tribunal did not issue one of the multiple orders and neither the custodial parent, noncustodial parent, nor child remain in a State where one of the multiple orders was issued, then personal jurisdiction may always be obtained by referring the case to the State in which the opposing party resides. Section 207 of UIFSA provides the proper procedures to follow to obtain a DCO in this situation.

Section 303.7(c)(3)—Determine if use of one-state remedies is appropriate and Section 303.7(c)(4)—Actions required within 20 calendar days of completing requirements in paragraphs (c)(1)-(3)

1. Comment: Section 303.7(c)(3), requires the initiating State agency to: "Determine the appropriateness of using its one-state interstate remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding." One commenter suggested replacing the term "one-state interstate" with the term "intrastate" because the commenter felt this would be consistent with

terminology in § 303.7(c)(4)(i) and (ii), which discusses, in part, a State taking "intrastate" action for getting a determination of controlling order or referring a case.

Response: As indicated in the discussion above regarding the definition of the term "one-state interstate," we replaced the definition of that type of case with a definition of "one-state remedies." "One-state remedies" are defined as the exercise of a State's jurisdiction over a non-resident parent or direct establishment, enforcement, or other action by a State against a non-resident parent in accordance with the long-arm provision of UIFSA or other State law. In § 303.7(c)(3), we have removed the word "interstate" so that the regulation now reads: "Determine whether the noncustodial parent is in another jurisdiction and whether it is appropriate to use its one-state remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding."

2. Comment: One commenter agreed that one-state interstate actions be up to the initiating State. However, the commenter asked OCSE to clarify in the rule that States should not send cases to responding States for establishment when an adjustment is appropriate, particularly in regard to establishing cash medical support.

Response: OCSE agrees States should be careful to ask for establishment of an order only if there is no order in existence and should otherwise ask for an adjustment of the order. For example, if a State has an order that does not include cash medical support,

and, later, an initiating State wants to add cash medical support to that first State's order, the initiating State should seek an adjustment of the order.

3. Comment: One commenter asked for agencies that decide to enforce an order through direct income withholding in another State to be required to notify the jurisdiction with the order that they are taking this action and also specify the arrears balance being enforced.

Response: A State may not use direct income withholding to collect payments and have them forwarded directly to the State Disbursement Unit rather than sending payments to the designation specified in the order. As mentioned in the preamble, this is prohibited by PIQ-01-01. Therefore, OCSE does not believe further notification requirements or statements of arrears balances are necessary.

4. Comment: One commenter expressed concern that reading § 303.7(c)(3) and § 303.7(c)(4)(ii) together, which discuss the State's decision to use one-state remedies and the State's decision to take intrastate action on a case, respectively, may be interpreted to mean that States must take direct action in cases where a noncustodial parent lives or works on the reservation of a Tribal IV-D program before referring the case to the appropriate Tribal IV-D program.

Response: The decision as to whether a State uses one-state remedies or refers a case to another State IV-D agency is entirely up to the initiating State agency. There is no

Federal mandate that States use any one approach first. Because the language under proposed § 303.7(c)(4)(ii) may have been interpreted to mean that States were obligated to use one-state remedies first, we have changed and simplified this paragraph. The final language requires the initiating State IV-D agency to refer an intergovernmental case, within the 20-calendar-days time frame, to the appropriate State Central Registry, Tribal IV-D program, or Central Authority of a country for action, if the initiating agency has determined that use of one-state remedies are not appropriate.

5. Comment: Proposed § 303.7(c)(4) required the initiating State agency to ask the appropriate intrastate tribunal for a DCO and reconciliation of arrearages or determine the request for such a determination will be made through the appropriate responding agency. One commenter asked that OCSE clarify when the initiating State must make a DCO and when the initiating State must request the responding agency to make a DCO.

Response: If the initiating State has personal jurisdiction over both parties, it is the initiating State's election whether it should proceed with a DCO or request a responding State with personal jurisdiction to make a DCO. The conditions under which a State may make a DCO are set out in section 207 of UIFSA.

6. Comment: Several commenters asked for clarification about the 20-calendar-days time frame, and indicated confusion over the complexity of proposed § 303.7(c)(4).

Response: In response to the numerous requests for clarity in regard to this section, OCSE made a number of changes to simplify and refine the language. First, we moved the clause regarding the State determination that the noncustodial parent is in another jurisdiction from § 303.7(c)(4) to § 303.7(c)(3). It is logical for the State to identify that the noncustodial parent is in another jurisdiction before the State decides whether to use one-state remedies under § 303.7(c)(3), rather than afterwards, as previously constructed in the NPRM.

Section 303.7(c)(3) now reads: "Determine whether the noncustodial parent is in another jurisdiction and whether it is appropriate to use its one-state remedies, as defined in § 301.1 of this chapter, to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding."

Also, in § 303.7(c)(4), we clarified the two triggers for the start of the 20-calendar-days time frame. The first trigger of the time frame is the completion of the actions required in paragraphs (c)(1) through (c)(3), which are, respectively, determining existing support orders, determining in which State a DCO and reconciliation of arrearages may be made in a case with multiple orders, and determining the location of the noncustodial parent and whether or not to use one-state remedies. The second trigger of the 20-calendar-days time frame is the receipt of any necessary information needed to process the case. One example of necessary information is copies of orders in a case where multiple orders exist.

In addition, we simplified paragraphs (c)(4)(i) and (ii). Under paragraph (c)(4)(i), we removed "If the agency has determined there are multiple orders in effect under paragraph (c)(1) of this section…," because the change specified above requires that this determination is completed before a State takes the actions under paragraph (4). Similarly, under paragraph (c)(4)(ii), we removed the clause, "unless the case requires intrastate action in accordance with paragraphs (c)(3) or (4)(i) of this section…," because it is redundant, given the previous changes. Finally, in paragraph (c)(4)(i) we added the phrase "State IV-D" to "responding agency." Since "responding agency" can include States, Tribes and countries, we wanted to be clear that, with respect to DCOs, only States are involved. The full text of § 303.7(c)(4) now reads:

"(4) Within 20 calendar days of completing the actions required in paragraphs (1) through (3) and, if appropriate, receipt of any necessary information needed to process the case:

(i) ask the appropriate intrastate tribunal, or refer the case to the appropriate responding State IV-D agency, for a determination of the controlling order and a reconciliation of arrearages, if such a determination is necessary; and

(ii) refer any intergovernmental IV-D case to the appropriate State Central Registry, Tribal IV-D program, or Central Authority of a country for action, if one-state remedies are not appropriate;"

The use of "and" between the two paragraphs is intentional because States should proceed to enforce an existing support order, pending a DCO. Enforcement of support obligations should not stop while tribunals make DCOs. To do otherwise would deprive children of the support they need on an on-going basis.

7. Comment: OCSE invited comments regarding reasonable time requirements for translation if needed. The majority of the commenters expressed agreement with the 20-calendar-days time frame, because § 303.7(c)(4) is qualified with the receipt of any necessary information needed to process the case. One commenter requested that the time frame be extended to 90 days so that the initiating State can locate a translation resource and enter into a necessary contract for the translation.

Response: OCSE has not built in time for translation within the specified 20 calendar days because we believe that, until the necessary translation is completed, the initiating agency will not have all "necessary information needed to process the case" under paragraph (4). OCSE agrees with the majority of the commenters who stated that the 20-calendar-days time frame to refer a case to another State is adequate.

8. Comment: One commenter requested that OCSE clarify how the 20-calendar-days time frame in § 303.7(c)(4) fits with the 30-working-days time frame in § 303.7(a)(6) to provide any order and payment record information requested by a State IV-D agency for a DCO and reconciliation of arrearages.

Response: The 30-working-days time frame for a State IV-D agency to provide any order and payment record information in § 303.7(a)(6) is a general responsibility; thus, it could apply to both initiating and responding State IV-D agencies. The order and payment information requested in § 303.7(a)(6) may very well be a part of the necessary

information that the initiating State requires once it has determined that a noncustodial parent is in another jurisdiction in § 303.7(c)(3). Therefore, the 20-calendar-days time frame in § 303.7(c)(4) could be triggered after receipt of order and payment record information another State must provide to the initiating State IV-D agency under § 303.7(a)(6).

9. Comment: One commenter asked if 45 CFR 303.7(c)(4)(i) requires a Tribal IV-D program to complete a DCO and reconciliation of arrearages when the Tribal IV-D program is the "appropriate intrastate tribunal," or whether a Tribal IV-D program would not be the appropriate intrastate tribunal in such a situation.

Response: This rule does not apply to Tribes or Tribal IV-D programs.

Section 303.7(c)(7)—Notice of interest charges

1. Comment: With regard to § 303.7(c)(7), which requires the initiating State IV-D agency to notify the responding agency of interest charges, several commenters pointed out that programming for QUICK is a better use of their limited systems programming resources and provides better and timelier information on interest for interstate cases.

Response: While QUICK does provide an interest amount on the financial summary screen, it is an individual query by case and does not specify interest charged for a specified period. OCSE will evaluate whether this enhancement can be made to the application so case-specific queries can be made to obtain information about interest charged during a specified period of time.

2. Comment: Another commenter asked what type of CSENet transaction should be used to notify the responding agency quarterly of the interest amount.

Response: OCSE will also determine the feasibility of adding a specific transaction to CSENet to periodically advise States of the interest charged on a case. This type of proactive information-sharing lends itself well to the batch processing supported by CSENet. Periodic reporting could be timed with the initiating State's interest-charging frequency.

3. Comment: Seven commenters expressed that notifying the responding agency at least quarterly of the interest charges owed on overdue support is too frequent and would place a burden on States. Several commenters recommended changing the time frame to annually, and one commenter proposed that the annual date be uniform.

Response: We agree that requiring the initiating IV-D State agency to notify the responding agency quarterly of interest owed on overdue support may cause a burden on State IV-D agencies. We believe that providing interest charges annually, and upon request in an individual case, in those instances in which the information may be needed more frequently than annually, will still address States' concerns with case processing difficulties that are caused by the wide range of State policies on interest. We have changed the language in the regulation to "annually and upon request in an individual case." With respect to the suggestion for a uniform date for the interest information to be

reported annually, we can identify no compelling reason to do so and leave it up to the States to decide.

4. Comment: OCSE requested comments on whether and how accounting records should be updated when the controlling order was not issued by the initiating State. Several commenters indicated that if the initiating agency is requesting enforcement of a third State's order, it should be the initiating State's responsibility to provide a calculation of the interest based on the issuing State's law.

Response: We agree that in situations where the initiating State is requesting enforcement of a third State's order, the initiating State should provide the amount of interest owed based on the issuing State's law.

5. Comment: One commenter indicated that the initiating agencies should report accumulated interest owed by obligors to responding agencies, but in an automated fashion. The commenter further stated that otherwise, the quarterly reporting would require manual updates to the responding State's IV-D automated system.

Response: While we agree that electronic communication is more efficient, it is not mandated.

6. Comment: One commenter asked if the responding agency can refuse to collect interest for the initiating State or close its case if the initiating State fails to provide the quarterly interest calculation as required.

Response: A responding agency cannot refuse to collect interest for the initiating State if the interest is a part of the child support order that the responding State is enforcing. Section 453(p) of the Act defines the term "support order" as: "a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief."

Without the interest calculation, the responding State may be unable to collect any interest earned. However, the responding State may not close its case due to the initiating State's failure to provide the interest calculation as required. The responding State must continue to enforce the initiating State's case, collecting current support and arrearages.

Section 303.7(c)(8)—Submitting past-due support for Federal enforcement remedies

1. Comment: One commenter asked that OCSE consider adding language that would allow the responding State to submit cases for passport denial or other Federal enforcement techniques at the initiating State's request. Another commenter asked if it

would be possible to add MSFIDM as one of the Federal enforcement techniques that the initiating State IV-D agency will use when submitting past-due support as required in § 303.7(c)(8).

Response: OCSE proposed that the initiating State IV-D agency submit all past-due support owed in IV-D cases for administrative offset and passport denial because those Federal-level remedies are triggered by States' data on the Federal income tax refund offset file. However, we have been convinced that it may be in the best interest of the child and family, in certain circumstances, for a responding State to submit past-due support using the Federal administrative offset, passport denial, MSFIDM, and/or Federal insurance match remedies. For example, because the administrative offset remedy is optional for States, the responding State may choose to certify a case where the initiating State does not. This would allow a collection from an administrative offset to be received and distributed to the family where otherwise it would not have been, or similarly, if a responding State requires full payment for a passport denial release where the initiating State does not.

This flexibility provides a greater opportunity for a collection, so we have removed the requirement from this rule that the initiating State IV-D agency submit past-due support for other Federal enforcement techniques, such as administrative offset, under 31 CFR 285.1, and passport denial under section 452(k) of the Act. However, the requirement for the initiating State IV-D agency to submit for Federal tax refund offset remains because that is the State with the assignment of support rights or request for IV-D services.

Federal insurance match and MSFIDM are also Federal enforcement techniques that fall into the category of cases that we prefer to have submitted by the initiating State IV-D agency, but also may be submitted by the responding State IV-D agency if deemed appropriate.

2. Comment: Several commenters expressed support for the requirement in § 303.7(c)(8) that the initiating State submit arrearages for Federal tax refund offset. One commenter asked, if there are arrearages in multiple States, which State is allowed to submit for Federal tax refund offset and how are the States supposed to know about another State's submittal.

Response: Section 303.72(d)(1) specifies that: "the State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the Secretary of the U.S. Treasury." Since all Federal remedies, including administrative offset of other Federal payments, are initiated based on the Federal income tax refund offset file submitted by each State, any State submitting past-due support for federal-level remedies should notify the other State in an interstate situation.

3. Comment: One commenter asked that OCSE specify that § 303.7(c)(8) is applicable even when the initiating State is submitting arrearages due under an order from another State. Proposed § 303.7(c)(8) would have required a State to submit all past-due support owed in IV-D cases that meets the certification requirements under § 303.72 for Federal tax refund offset, and such past-due support, as the State determines to be appropriate, for

other Federal enforcement techniques, such as administrative offset under 31 CFR 285.1, and passport denial under section 452(k) of the Act.

Response: This requirement applies to all interstate cases in which the initiating agency is submitting a case for Federal tax refund offset, including cases in which the initiating State is submitting arrearages due under an order from another State. The requirement in section § 303.72(d)(1), to notify any other State involved in enforcing the order when past-due support is submitted and when any offset is received, applies to these cases as well.

4. Comment: One commenter expressed concern that there is a probability that some States will adopt the option under the Deficit Reduction Act of 2005 (DRA) under which collections through Federal tax refund offset are distributed first to satisfy current support, while other States will continue to follow pre-DRA tax offset distribution under which collections are applied to satisfy only past-due and not current support. The commenter indicated that this will confuse amounts applied to current support and past-due amounts between States that opt for different approaches.

Response: We disagree with the commenter. In interstate cases, the initiating State IV-D agency is responsible for submitting past-due support owed in a IV-D case that meets the certification requirements under § 303.72 for Federal tax refund offset. The initiating State is similarly responsible for distribution. (See AT-07-05, Q & A 34, citing former

paragraph § 303.7(c)(7)(iv) and 45 CFR 303.7(c)(11)). Distribution and disbursement will be made in accordance with the initiating State's rules. In interstate cases, § 303.72(d)(1) requires the submitting State to notify any other State involved in enforcing the support order when it receives the offset amount from the Secretary of the U.S. Treasury.

5. Comment: One commenter asked that we clarify that when the initiating jurisdiction is not a State within the United States, the responding jurisdiction should submit these cases under § 303.7(c)(8).

Response: There is currently no statutory authority for Tribal IV-D programs to directly submit past-due support for Federal tax refund offset. However, past-due support owed to individuals receiving services from Tribal IV-D programs may be submitted for Federal tax refund offset by a State IV-D agency if the individual files an application for services from the State and the Tribal IV-D agency has a cooperative agreement with the State. See PIQT-07-02. Under current law at section 464(a)(1) and (2) of the Act, only past-due support owed in cases with an assignment of support rights or application for IV-D services under § 302.33(a)(1)(i) may be submitted for Federal tax refund offset; therefore, without an application for services from the State, past-due support owed in a case from another country cannot be submitted.

6. Comment: Proposed § 303.7(c)(8) and (9) require the initiating State IV-D agency to submit cases with qualified past-due support for Federal tax refund offset and other

Federal enforcement remedies and to report overdue support to Consumer Reporting Agencies. One commenter asked if proposed § 303.7(c)(8) and (9) are any different than the current rules or if the paragraphs just clarify the initiating State responsibilities.

Response: As we indicated in the preamble to the NPRM, proposed § 303.7(c)(8), specifically addresses the responsibility of the initiating State IV-D agency to submit past-due support for Federal tax refund offset, administrative offset, and passport denial. The reference to administrative offset and passport denial is new, while the responsibility for Federal tax refund offset was clarified. However, the requirement for the initiating State to submit for any other Federal remedies, other than Federal tax refund offset, has been removed in the final regulation.

Proposed § 303.7(c)(9), renumbered as (d)(6)(iii)—Submitting arrearages to Consumer Reporting Agencies (CRAs)

1. Comment: Some commenters expressed agreement with the requirement in proposed § 303.7(c)(9) for initiating State IV-D agencies to report overdue support to CRAs. Other commenters suggested that reporting overdue support to CRAs should be the responding State IV-D agency's responsibility because the responding State is already providing due process and enforcement services, and challenges to these enforcement actions occur in the obligor's home State.

Response: We agree with the commenters that suggest the responding State IV-D agency should report overdue support to CRAs. In AT-98-30, the answer to question #33 states, "from an interstate perspective, the responding State is responsible for pursuing all

appropriate enforcement activities (except for Federal Income Tax Refund Offset). Placing responsibility for reporting delinquencies to consumer reporting agencies upon the responding State follows the general rule in interstate enforcement, as opposed to the limited exception. In addition, having only one State responsible for such reporting eliminates the potential confusion in interstate cases associated with double reporting." AT-98-30 also points out that since the responding State will generally be the State of residence for the obligor, it is in the best position to efficiently handle any contest that may occur as a result of credit bureau reporting. OCSE agrees that this is a service best provided by the responding State IV-D agency, so proposed § 303.7(c)(9), has been renumbered as § 303.7(d)(6)(iii) and moved to the responding State responsibilities. Section 303.7(d)(6)(iii) assigns the responsibility of: "Reporting overdue support to Consumer Reporting Agencies, in accordance with section 466(a)(7) of the Act and § 302.70(a)(7) of this chapter" to responding State IV-D agencies.

2. Comment: One commenter suggested that both the initiating and responding State IV-D agency should be able to report overdue support to CRAs.

Response: We disagree with this comment because, as indicated in the preamble to the NPRM, it is necessary to specify which State must submit the overdue debt to CRAs to avoid both States submitting the same arrearage in a single case. Having both the initiating and responding State IV-D agency report overdue support to CRAs could result in the misconception that an obligor's child support debt is greater than it actually is. There are three major CRAs, Experian, Equifax, and TransUnion, and one State reporting arrearages is adequate and appropriate.

Proposed § 303.7(c)(10) renumbered as (c)(9)—Request for review of support order

1. Comment: One commenter asked that OCSE clarify that the requirement in proposed § 303.7(c)(10), to send a request for review of a support order to another State within 20 calendar days of determining that review is appropriate and receipt of the information necessary to conduct the review, means that the request should be sent to a State having continuing exclusive jurisdiction (CEJ) to modify an order.

Response: This requirement, renumbered as § 303.7(c)(9), has been retained from the previously existing regulation under initiating State responsibilities. The only change is adding a reference to section 466(a)(10) of the Act, as the timing and requirements for review and adjustment have changed over the years. If the initiating State has the legal authority to adjust the order, 45 CFR 303.8(f)(1) requires it to: "conduct the review and adjust the order pursuant to this section." Otherwise, a review request must be sent to a State that has legal authority to adjust the support order. This may be either the State with CEJ to modify its controlling order or, where everyone has left the State that issued the controlling order, the non-requesting party's State.

Proposed § 303.7(c)(11) renumbered as (c)(10)—Distribution and disbursement

1. Comment: One commenter stated that the requirement in proposed § 303.7(c)(11) for the initiating State to distribute and disburse support collections received should be strengthened to prohibit direct withholding by a State for arrearages assigned to that State when the obligee is receiving services in another State or when support is due to the

family under the "families first" distribution provisions of PRWORA. Another commenter gave the following scenarios:

Scenario 1

The custodial party is receiving services in one State [the first State], the obligor lives in a second State, and assigned arrearages are owed to a third State for Temporary Assistance for Needy Families (TANF) paid to the family. The second State will only accept a reciprocal case from the first State, and will tell the third State to send its case to the first State to collect the third State's arrearages because the first State (the initiating State) is responsible for distribution.

Scenario 2

The commenter stated that there are also situations in which the custodial parent is not receiving services from any State IV-D agency, and a responding State will not accept another State's case for collection of assigned arrearages only, indicating that the responding State must collect both current support and arrearages, not just arrearages.

Response: Arrearage-only IV-D cases have long been a part of the child support program. Instructions to the Federal annual statistical reporting form OCSE-157 in AT-05-09 recognize and define an arrears-only case as: "A IV-D case in which the only reason the case is open is to collect child or medical support arrearages owed to the state or to the family." Therefore, we believe it would be a significant change in this final regulation, without an opportunity for further discussion and comment, to prohibit direct withholding by a State for arrearages assigned to that State when the obligee is receiving

services in another State or when support is due to the family under the "families first" distribution provisions of PRWORA. However, if a custodial parent is receiving IV-D services in another State, we would encourage States to work together to ensure that families receive adequate services, including current support and arrears owed to them.

With respect to the first scenario, a responding State IV-D agency may not refuse to accept an interstate case from a State with an arrears-only IV-D case and tell that State to send its case to collect the assigned arrearages to a State in which the custodial parent is currently receiving IV-D services. A responding State must accept and process an intergovernmental request for services regardless of the existence of a separate interstate case from a different State. As indicated in the definition section of this rule, an intergovernmental IV-D case and an interstate IV-D case may include cases in which a State/Agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State.

In the second scenario, we do not agree with the commenter that the responding State may not accept an intergovernmental request for collection of only arrearages assigned to a State. If the custodial parent is not receiving IV-D services from any State, the responding State that receives a request from a State to collect assigned arrearages may not refuse to process that case. States with assigned arrearages from a former assistance case may not be providing services to the custodial parent if the custodial parent refuses continued IV-D services in response to the notice under § 302.33(a)(4) when the family stopped receiving assistance.

These comments address the complex issue of States with an interest in assigned arrearages, different State policy with respect to distribution, more than one IV-D case existing with respect to the same parties, and parents' choice about whether or not to receive IV-D services. In the DRA of 2005, Congress adopted family distribution options to encourage States to pay more support collections to families. As States expand their distribution policies, some of the inherent tensions involved in allocating collections among States with an interest in assigned arrearages, or between States with differing distribution policies, should begin to resolve themselves.

Proposed § 303.7(c)(12), renumbered as (c)(11)—Notice of case closure

1. Comment: One commenter indicated that while the change in proposed § 303.7(c)(12), now paragraph (c)(11), which requires the initiating State IV-D agency to notify the responding agency within 10 working days of case closure that the initiating State IV-D agency has closed its case pursuant to § 303.11, addresses the issue of overlapping enforcement efforts in a two-state interstate case, it does not address the problem of some States operating under UIFSA 1996 and others under UIFSA 2001. For example, an order is entered in State A, which has an open IV-D case. The custodial parent moves to State B and the noncustodial parent remains in State A. State B begins direct enforcement of State A's order and the employer begins remitting payments to State B, which disburses payments to the custodial parent. State A continues with enforcement provisions and becomes aware that State B has been receiving payments

directly, generally when aggressive enforcement remedies are being taken against the noncustodial parent.

Response: State B would not be authorized under UIFSA 1996 or 2001 to take the action described. Although not all States have received waivers to adopt UIFSA (2001), section 319(b) offers a mechanism for State B to ask State A for redirection of payments if the custodial parent, noncustodial parent, and child have all left the State.

2. Comment: One commenter supported the change in proposed § 303.7(c)(12), now paragraph (c)(11), because, with notice that the initiating State had closed its case, the responding agency could close its case without having a basis for closure other than notice that the initiating agency closed its case. However, the commenter recommended that the initiating agency provide the responding State with the specific reason for which the initiating agency closed its case. The commenter noted that this information can be relevant to the responding State if the responding State has obtained and is enforcing its own State's order.

The commenter notes the example of a responding State that is enforcing its own State's order using income withholding, at the request of an initiating State. If the initiating agency closes its case without explanation, the responding State might be compelled to continue enforcement based on the order itself. In this situation, the responding State might close the intergovernmental IV-D case, and then open a non-IV-D case to continue collections, based on the support order, if it is under income withholding. However,

information about the case closure from the initiating agency, such as that the custodial parent had died, would allow the responding State to appropriately close out the order.

Response: OCSE agrees that it may be important for a responding State to know the reason why an initiating State closes its case. Therefore, we are adding this requirement to the initiating State's responsibilities under § 303.7(c)(11) in the final rule. The revised rule reads as follows:

> "Notify the responding agency within 10 working days of case closure that the initiating State IV-D agency has closed its case pursuant to § 303.11 of this part, and the basis for case closure;"

Proposed § 303.7(c)(13), renumbered as (c)(12)—Instruct responding agency to close its case

1. Comment: One commenter expressed agreement with the theory of the requirement in proposed paragraph (c)(13), now (c)(12), under which the initiating State IV-D agency must instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice to the same or another employer unless the two States reach an alternative agreement on how to proceed. However, the commenter felt that the reality of the situation is different. The commenter provided the following scenarios:

- A case has recently been sent to another State and that State does not yet have the case initiated. The initiating State receives information regarding a new

employer. It sometimes takes the responding State months to initiate the case and collections would be lost during this time, not benefiting the child, obligee, or obligor. In these situations, we instruct our caseworkers to issue the income withholding order, but inform the responding State and agree to terminate the income withholding order when the responding State is ready to issue its income withholding order.

- The interstate case may have been open for some time and both States receive the new employer information. If the responding State fails to issue the income withholding order in a timely fashion, our caseworkers may again issue the income withholding order but inform the other State and agree to terminate the income withholding order when the responding State is ready to issue its withholding notice. Especially if the obligor is a "job hopper," timely issuance of income withholding orders is critical.

Response: The central registry in the responding State is required to open an interstate case within 10 working days of receipt of the case in accordance with 45 CFR 303.7(b)(2). Therefore, it is not acceptable for States to take months to open a case or initiate income withholding. However, we believe that the provision in § 303.7(c)(12) that allows States to reach an alternative agreement could address these situations. The language allows both scenarios to exist under this rule if both States agree to the approach.

2. Comment: One commenter expressed disagreement with the provision in proposed § 303.7(c)(13), renumbered as (c)(12), under which the initiating State IV-D agency must instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice to the same or another employer unless the two States reach an alternative agreement on how to proceed. The commenter recommended that States be encouraged to communicate more effectively and not interrupt the flow of money to the family.

Response: Again, we believe that the commenter's recommendation can be achieved through the language in paragraph (c)(12) that allows States to agree to an alternative agreement.

3. Comment: One commenter indicated that proposed case closure criterion at § 303.11(b)(13) states that: "The initiating agency has notified the responding State that the initiating State has closed its case under [proposed] § 303.7(c)(12)," and suggested that § 303.11(b)(13) also refer to proposed § 303.7(c)(13), which required that the initiating State IV-D agency instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice to the same or another employer unless the two States reach an alternative agreement on how to proceed.

Response: The aforementioned requirement in proposed § 303.7(c)(12), which has been renumbered as (c)(11), corresponds directly with the case closure criteria found in proposed § 303.11(b)(13) as mentioned above. The requirement in proposed § 303.7(c)(13), which has been renumbered as (c)(12), provides the steps the initiating State should take after notifying the responding agency that the initiating agency has closed its case. Therefore, we do not believe this change is necessary.

Proposed § 303.7(c)(14), renumbered as (c)(13)—Accept collections if responding State was not notified initiating State had closed its case

1. Comment: Several commenters expressed agreement with the provision in proposed § 303.7(c)(14), now (c)(13), that the initiating State IV-D agency must make a diligent effort to locate the obligee, including use of the Federal Parent Locator Service and the State Parent Locator Service, and accept, distribute and disburse any payment received from a responding agency if the initiating agency has closed its case pursuant to § 303.11 and has not notified the responding agency to close its corresponding case. However, one commenter read the provision to imply that closing a IV-D case somehow stops the child support obligation.

Response: Closing a IV-D case does not impact or eradicate a support order or obligation; it merely means that the IV-D agency is no longer working the case. Closing the IV-D case has no impact on any existing order in the case.

2. Comment: One commenter recommended that OCSE amend proposed § 303.7(c)(14), now (c)(13), to mandate that if no IV-D agency is providing IV-D services, support must be redirected to the State Disbursement Unit (SDU) of the State that issued the order, and that the issuing State's SDU must accept and distribute payments received under such orders.

Response: Whether or not there is a IV-D case, support payments must be directed to the person or entity specified in the support order. This is a matter of State and not Federal law. However, under section 454B and 466(b)(5) of the Act, support payments in IV-D cases and non-IV-D income withholding cases must be sent to the SDU. Therefore, in these situations, States need to ensure that the support order specifies that payments be sent to the SDU.

3. Comment: One commenter indicated that, if the location of the custodial parent is unknown and the initiating State does not have the controlling order, the initiating State should be prohibited from sending the money directly back to the obligor instead of returning it to the responding agency so the correct pay records can be preserved.

Response: The initiating agency is responsible for the distribution and disbursement of child support collections in intergovernmental cases, in accordance with § 303.7(c)(13). States must communicate with one another to ensure that payment records are consistent and accurate.

4. Comment: One commenter indicated support for proposed § 303.7(c)(14), now (c)(13), which requires the initiating State IV-D agency to accept, distribute and disburse payments from a responding agency when the initiating State IV-D agency fails to notify the responding agency that it has closed its case. However, the commenter suggested removing the phrase "make a diligent effort to locate the obligee, including use of the Federal Parent Locator Service and the State Parent Locator Service," which lists specific resources that operationally cannot be used if the initiating State IV-D agency has already closed its case.

Response: We believe it is appropriate to include this language. The initiating State IV-D agency's use of the Federal Parent Locator Service and the State Parent Locator Service is appropriate and necessary because it is for a IV-D purpose, as is distributing and disbursing the collections.

Section 303.7(d)—Responding State IV-D agency responsibilities

Section 303.7(d)(1)—Accept referred cases

1. Comment: One commenter expressed a belief that the requirement in § 303.7(d)(1), that responding State IV-D agencies accept and process an intergovernmental request for services, regardless of whether the initiating agency elected not to use remedies that may be available under the law of that jurisdiction, runs counter to the general notion that States should fully use their remedies in the first instance without involving another State. The commenter requested that OCSE consider clarifying that the initiating State must exhaust all in-State remedies that it determines may be effective before referral to the

responding State. Then, once the matter is referred, the responding State must accept and process the referral.

Response: We disagree with the commenter. In AT-98-30, the answer to question #1 states that: "a responding State may not refuse to accept a two-state request for order establishment because it believes that the initiating State could exercise long-arm jurisdiction." As indicated in the preamble to the NPRM, OCSE recognizes the benefits of obtaining or retaining control of a case where the responding party resides outside of State borders. Indeed, we encourage one-state solutions; however, the initiating State agency is free to weigh the legal and factual circumstances of a case and select whether it is appropriate to exercise long-arm jurisdiction or not. Nothing in this rule infringes upon a State's decision-making authority to select a one-state or two-state approach in interstate cases. The choice remains within the purview of the initiating State IV-D agency.

Section 303.7(d)(2)(iii)—Process case to extent possible pending receipt of additional information

1. Comment: Some commenters agreed with the requirement in § 303.7(d)(2)(iii) that the responding State should process the case to the greatest extent possible, even if all necessary documentation has not been received, while a few commenters suggested that the case be returned to the initiating agency.

Response: OCSE continues to believe that this provision remains useful and serves to advance the effectiveness of case processing. A major focus of the National Child Support Enforcement Strategic Plan is to ensure that more children and families can rely on child support payments. Our goal is children's financial security.

2. Comment: One comment indicated that a time frame should be established in § 303.7(d)(2)(iii) for the initiating agency to provide the documentation needed to process a case when a responding State IV-D agency is processing the case to the fullest extent possible pending necessary action by the initiating agency.

Response: Under § 303.7(c)(6) the initiating State must provide the responding agency with an updated intergovernmental form and any necessary additional documentation within 30 calendar days of receipt of the request for information, or notify the responding agency when the information will be provided.

3. Comment: One commenter recommended substituting the word "incomplete" for "inadequate" in § 303.7(d)(2)(iii), when describing missing documentation, because by definition, inadequate documentation is insufficient for its intended purpose.

Response: We agree with the commenter and revised the regulatory language at § 303.7(b)(3) and § 303.7(d)(2)(iii) to reflect this change.

Section 303.7(d)(3)—Noncustodial parent is found in a different State

1. Comment: We received a number of comments on the proposed requirement in § 303.7(d)(3) for the responding agency to, within 10 working days of locating the noncustodial parent in a different State, forward/transmit forms and documentation to the central registry in the State where the noncustodial parent is located and notify the initiating agency and central registry where the case has been sent. The majority of the commenters preferred that the forms and documentation be returned to the initiating agency.

Response: In response to the majority of the commenters, we will keep the requirement in § 303.7(c)(6) of the previously existing rule, which requires the responding State IV-D agency to return the forms and documentation, including the new location, to the initiating agency, unless directed to do otherwise by the initiating agency. We agree that forwarding the case directly to the State in which the noncustodial parent has been located reduces the initiating agency's control of the case and choice of whether it will use a one-state or two-state remedy in the State where the noncustodial parent has been located. Paragraph (d)(3) now reads as follows:

> "(3) Within 10 working days of locating the noncustodial parent in a different State, the responding agency must return the forms and documentation, including the new location, to the initiating agency, or, if directed by the initiating agency, forward/transmit the forms and documentation to the central registry in the State where the noncustodial parent has been located, and notify the responding State's own central registry where the case has been sent."

2. Comment: We requested comments as to whether there is a need to notify both the initiating agency and the central registry, as required under § 303.7(d)(3), and if not, where the notice of the State's action should be directed; the majority of the commenters felt that the notice should only go to the initiating agency.

Response: We believe the language was confusing. It is important for a responding agency to notify the initiating agency and the responding State's own central registry (rather than the initiating State's central registry) where the case has been sent. We changed the language in the regulation in paragraph § 303.7(d)(3) to include this clarification, as indicated above.

Section 303.7(d)(4)—Locating the noncustodial parent in a different political subdivision within the responding State

1. Comment: The provision in proposed § 303.7(d)(4) stated that within 10 working days of locating the noncustodial parent in a different jurisdiction within the State, the responding State IV-D agency must forward/transmit the forms and documentation to the appropriate jurisdiction and notify the initiating agency and central registry of its action. We received several comments, the majority of which suggested that only the initiating agency be notified.

Response: In response to the commenters above, we believe the responding State's central registry must be informed if a case is sent to another jurisdiction in the responding State. In addition, to avoid ambiguity, we replaced the term "jurisdiction" with "political subdivision." As such, § 303.7(d)(4) has been clarified to read as follows:

"(4) Within 10 working days of locating the noncustodial parent in a different political subdivision within the State, forward/transmit the forms and documentation to the appropriate political subdivision and notify the initiating agency and the responding State's own central registry of its action;"

2. Comment: One commenter asked if the 10 working days referenced in § 303.7(d)(4) is in addition to the 10 working days under paragraph § 303.7(b)(2), in which the central registry in the responding State agency must process the request.

Response: Yes, the 10 working days under § 303.7(d)(4) within which the responding State agency must forward/transmit the forms and documentation to the appropriate political subdivision within the State, is in addition to the 10 working days in which the central registry must process the request under § 303.7(b)(2).

3. Comment: One commenter questioned whether Tribal IV-D programs should be included in the definition of "appropriate tribunal" and "appropriate jurisdiction" and expected to comply with this directive and time frame in § 303.7(d)(4).

Response: As indicated previously in this preamble, while the intergovernmental child support rule recognizes that States will receive requests to work cases from Tribal IV-D agencies as well as other countries, it applies to State IV-D programs only. This rule does not apply to Tribes. By use of the phrase "a different jurisdiction within the State," proposed section 303.7(d)(4) referred to county-operated IV-D programs, in which a

noncustodial parent is located in another county and the case is then forwarded from the receiving responding local IV-D agency to that other county. It does not include Tribal or foreign jurisdictions. As noted earlier, to avoid ambiguity, in the final rule we replaced the term "jurisdiction" with "political subdivision."

It is possible, although unlikely, that a responding State IV-D agency may locate a noncustodial parent on Tribal land or in another country. However, in such instances, the responding agency should return the case to the initiating State IV-D agency. If a noncustodial parent is located in a foreign country, we believe it is more appropriate for the initiating State to prepare and send the case to another country, in accordance with guidance in the appropriate caseworker's guide.

Section 303.7(d)(5)—Time frame for filing a DCO request

1. Comment: OCSE asked for comments on the time frame in proposed § 303.7(d)(5)(i), which requires a responding State IV-D agency to file the DCO request with the appropriate tribunal in its State within 10 working days of receipt of the request or location of the noncustodial parent, whichever occurs later. The majority of the commenters felt that the 10-day time frame was too short for the following reasons: caseload sizes, tribunal involvement, and the fact that the IV-D agency has no control over court scheduling. Most suggested that the time frame be extended to 30 calendar days.

Response: We agree with the commenters that 10 working days might be an inadequate amount of time to prepare and file documents necessary to request a DCO. We have

changed the time frame in § 303.7(d)(5)(i) to within 30 calendar days of receipt of the request for a DCO or location of the noncustodial parent, whichever occurs later.

Section 303.7(d)(6)(i)—Seeking a judgment for genetic testing costs

1. Comment: One commenter disagreed with retaining existing language in § 303.7(d)(6)(i), which provides that a responding IV-D agency must attempt to obtain a judgment for costs if paternity is established, and suggested that the language be revised to allow the responding IV-D agency the option to attempt to recover its costs without it being a mandate.

Response: We agree with the commenter. Now that the responding, rather than initiating State is responsible for the cost of genetic testing in intergovernmental IV-D cases, we agree that the responding State should be able to determine if it will or will not recover the costs of genetic testing. Therefore, we have changed the language in this paragraph to clarify that responding States may elect to attempt to obtain a judgment for genetic testing costs should paternity be established. Section 303.7(d)(6)(i) now reads as follows: "Establishing paternity in accordance with § 303.5 of this part and, if the agency elects, attempting to obtain a judgment for costs should paternity be established."

Proposed § 303.7(d)(6)(iv), renumbered as § 303.7(d)(6)(v)—Collecting, monitoring, and forwarding support payments

1. Comment: One commenter indicated that § 303.7(d)(6)(v) will require changes to the Automated Clearinghouse formats as currently outlined by Federal banking guidelines.

Section 303.7(d)(6)(v) requires that the responding State IV-D agency collect and monitor any support payments from the noncustodial parent; forward payments to the location specified by the initiating agency; include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter, and include the responding State's case identifier and locator code, as defined in accordance with instructions issued by OCSE.

Response: The "sufficient information" referenced in the paragraph is identical to the information required in National Automated Clearinghouse Association's interstate Electronic Data Interchange transaction, and States are currently required to transmit and receive information in this format.

Section 303.7(d)(7)—Notice of hearings

1. Comment: Section 303.7(d)(7) requires responding agencies to provide timely notice to the initiating agency in advance of any hearing before a tribunal that might result in establishment or adjustment of an order. One commenter asked if the section would apply in the instance of an administrative review and adjustment, if no one requests a hearing to dispute the findings. The commenter also asked how the section applies to States that automatically issue cost-of-living adjustment (COLA) increases.

Response: The requirement under § 303.7(d)(7) for the responding State to provide timely notice to the initiating agency in advance of a hearing applies only if there is a hearing scheduled. If a responding State does not schedule hearings as part of its administrative review and adjustment process or its automatic COLA increase process,

the requirement for the responding agency to provide notice of hearings under § 303.7(d)(7) does not apply.

The rules for review and adjustment of child support orders under § 303.8(b)(2) require that a State have procedures which permit either party to contest certain automatic adjustments, including a COLA increase, within 30 days after the date of the notice of the adjustment. If a party to the order contested the adjustment in response to the initial notice of the adjustment and a hearing before a tribunal in the responding State is scheduled as a result, the requirement under § 303.7(d)(7) would apply, and the responding State would be required to provide timely notice to the initiating agency.

2. Comment: Another commenter suggested that the requirement for a responding State to provide timely notice to the initiating State be placed in § 303.7(a), under general responsibilities. The commenter suggested that making this a general responsibility is appropriate since such hearings could take place in the initiating State, as well as in the responding State.

Response: OCSE agrees that a hearing that might result in the establishment or adjustment of an order that is associated with an interstate case could take place in the initiating or responding State, or even in a third State, depending on which State has been determined as having the controlling order. The requirement under § 303.7(d)(7) was designed to address the problem of responding agencies establishing or adjusting orders

without providing both parents the opportunity to participate in the process. That remains its purpose.

In regard to the inverse scenario, when an initiating State is establishing or adjusting an order and an obligor is in a responding State, we do not believe there is a similar problem, i.e., that the obligor will not be notified. A State, in this case an initiating State, that holds a hearing for establishment or adjustment of an order must ensure due process and provide notice to the obligated parent. Therefore, the requirement under § 303.7(d)(7) is appropriately listed as a responding State responsibility rather than a general responsibility of both responding and initiating States.

3. Comment: Section 303.7(d)(7) requires responding States to provide "timely notice" of review and adjustment hearings to initiating States. Two commenters requested clarification as to whether this requirement had a time frame. One commenter asked for a definition of the term "timely." Another commenter suggested that the notice be sent to the initiating State at the same time it is provided to the parties to the child support order.

Response: In § 303.7(d)(7), the term "timely" in the phrase "provide timely notice" means sufficiently in advance so as to allow the initiating agency to provide information for the hearing and the opportunity to participate and to ensure that the custodial parent has also received notice and has the opportunity to participate. We defer to State procedures to define adequate notice of hearings, as we generally defer to States to follow their own due process requirements.

Proposed § 303.7(d)(8)—Allocation of collections

1. Comment: OCSE received nearly a dozen comments on proposed § 303.7(d)(8) requiring responding States to allocate collections proportionately between arrearages assigned to the responding State in a separate case and to arrearages owed in an interstate case, either to an obligee in the initiating State or the initiating State itself.

All but one of the commenters on this provision appeared to be in opposition. Many were confused by the provision and preamble language and asked for clarification. A number of commenters objected to the practice that payments collected on a specific order could be allocated to other orders. The commenters questioned the legality of such an action, as well as the adverse impact it would have on maintaining correct arrearages and payment records and therefore ensuring proper enforcement in the responding State (e.g., incorrect payment records could result in States erroneously reporting the obligor for tax offset, passport denial, or credit bureau reporting). Other commenters felt that this provision conflicted with or confused distribution requirements, and at least one was concerned about how the provision would impact its statewide automated system.

Response: The proposed requirement was designed to address a narrow interstate circumstance where a responding State retains a collection to satisfy its own assigned arrearages under the same support order on its own case before sending collections to an initiating State. In consideration of the commenters' strong opposition, OCSE has eliminated proposed § 303.7(d)(8). The issue of how responding States should allocate

collections between assigned arrearages on its own case and support owed in an interstate case may better be addressed in the context of meetings on intergovernmental cooperation, rather than in regulation. However, it is important to note that, with the exception of Federal tax refund offset collections (unless the initiating State has opted to pay the offset collections to families first), any collection must first be applied to satisfy current support in accordance with § 302.51(a) before it is applied to satisfy arrearage.

It is also important to note that the rules on income withholding address the issue of allocating payments across multiple cases and apply in interstate as well as intrastate cases. Section 303.100(a)(5) states that: "If there is more than one notice for withholding against a single noncustodial 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."

2. Comment: In regard to this same proposed § 303.7(d)(8), several commenters discussed the second interstate "allocation" scenario described in the preamble of the proposed rule, involving an initiating State sending only one case to a responding State but then allocating collections from that one case across multiple cases with the same obligor in the initiating State. As stated in the preamble, this scenario is as follows: "A responding State makes a collection in an interstate Case A, credits the payment to the

case, and forwards the money to the initiating State for distribution and disbursement. The initiating State receives the collection for Case A but applies it, in part, to support due by the same obligor to several families in Cases B and C. The initiating State may not advise the responding State how the payment was allocated and distributed."

Several commenters acknowledged the problems created for the responding State when payments collected by the responding State and sent to the initiating State on a specific order are allocated by the initiating State to other orders. At least one commenter supported OCSE's suggestion for an initiating State to send all cases to a responding State, while one commenter, from a State with a county-based child support system, strongly objected to this practice.

Response: We reiterate that States should refer all cases involving an obligor to a responding State. However, there is no consensus on this issue. Because statewide automated systems and current practices regarding the handling of multiple cases vary so broadly across States, and because the Federal statute only addresses distribution within a case, other than with respect to income withholding, we believe this issue may better be addressed in the context of meetings on intergovernmental cooperation, rather than in this rule.

Proposed § 303.7(d)(9), renumbered as § 303.7(d)(8)—Notice of fees and costs deducted

1. Comment: One commenter objected to the requirement, under proposed § 303.7(d)(9), for the responding State to identify fees or costs deducted from support

payments when forwarding payments to the initiating agency, citing the impact on statewide automated systems. In a similar statement, another commenter voiced concern about the impact this requirement would have on the statewide systems considering the commenter's State does not currently charge any fees on interstate cases.

Response: This requirement should not have an impact on statewide automated systems because it is not a new requirement. This requirement has been in effect since the 1988 publication of the former interstate regulations and since the issuance of system certification requirements under PRWORA. Statewide automated systems must be able to record the receipt of payments on fees, including interest or late payment penalties, in the automated case record, whether or not the State practices cost recovery or imposes fees.

2. Comment: One commenter asked how the responding State would notify the initiating State of deducted fees and costs under proposed § 303.7(d)(9).

Response: Section 303.7(d)(8) of the final rule [proposed § 303.7(d)(9)] requires that the responding State identify any fees or costs deducted from support payments when forwarding the payments to the initiating State, but does not mandate any one approach or method for doing this. OCSE leaves it to States to develop their own best practices for how responding States share this information in intergovernmental cases.

3. Comment: The same commenter also asked whether the responding State could deduct fees before sending current support under proposed § 303.7(d)(9).

Response: No, in accordance with § 302.33(d)(3), the IV-D agency "shall not treat any amount collected from the individual as a recovery of costs…except amounts which exceed the current support owed by the individual under the obligation." In other words, a responding State may not deduct costs before sending current support.

Proposed § 303.7(d)(10), renumbered as § 303.7(d)(9)—Case closure in direct income withholding cases

1. Comment: We received a half dozen comments on the responding State requirement, under proposed § 303.7(d)(10), to stop an income withholding order and close the intergovernmental IV-D case within 10 days of receipt of a request for case closure from an initiating agency, under proposed § 303.7(c)(13) [final rule § 303.7(c)(12)], unless the States reach an alternative agreement.

Two commenters remarked on the 10-day time frame. One suggested using "working" days to make the time frame consistent with other similar time frames in the rule. Another said the time frame was too short, particularly for States that implement income withholding through a judicial process as opposed to administratively.

Response: OCSE agrees that, for clarity and consistency, the time frame in the final rule § 303.7(d)(9) [proposed § 303.7(d)(10)] should be changed to "working" days. While this change does clarify the time frame, OCSE does not agree that a longer time frame is

necessary to accommodate States with judicial income withholding processes. Income withholding procedures are designed to be an efficient enforcement tool and are required by statute and regulation to be applied and terminated quickly without the need for court involvement. As stated in section 466(b)(2) of the Act, and reiterated in 45 CFR 303.100(a)(4), income "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 [the order] …." Further, the "Expedited Procedures" section of section 466(c)(1) of the Act requires States to enact laws under which State agencies have the authority to take certain actions, including income withholding, "without the necessity of obtaining an order from any other judicial or administrative tribunal."

2. Comment: One commenter emphasized that the requirement to stop income withholding and close an intergovernmental case under proposed § 303.7(d)(10) would not apply in instances where the responding State held the controlling order because the responding State must determine when its own order is paid in full and the case should be closed. In addition, the commenter believed that the initiating State should not be issuing direct withholding orders to employers for a case that is already being enforced by the State that has the controlling order.

Response: OCSE disagrees that the requirement to close the responding State IV-D case would not apply when the responding State holds the controlling order underlying the interstate case. The location of the controlling order has no bearing on the application of this rule, since the support order is not affected by the opening or closing of any IV-D

case associated with it. Therefore, while a responding State may hold the controlling order, the responding State may still receive, work, and must, when instructed, close an intergovernmental IV-D case sent from an initiating agency based on that same order.

For example, a responding State could be using income withholding to collect assigned past-due support owed to the responding State in an arrears-only case and to collect on a case sent by an initiating State providing services to the custodial parent based on his or her application for IV-D services under § 302.33. In this instance, § 303.7(d)(9) of the final rule allows the initiating State to instruct the responding State to close its interstate case so that the initiating State can use direct withholding to collect support under the same order for the custodial parent. By closing the interstate IV-D case, the responding State does not have to close its separate IV-D arrears-only case, but could continue to collect on that case. Coordination between States which are both enforcing the same order, albeit for different purposes, is essential. In fact, § 303.7(d)(9) allows States to reach an alternative agreement if that will better serve the States in processing their cases. In response to the commenter's statement that the initiating State should not issue direct withholding orders to employers for a case that is already being enforced by the State with the controlling order, Section 466(b)(9) of the Act and UIFSA authorize direct income withholding. As stated in the preamble of the proposed rule: "the election to close an interstate case involving two States belongs exclusively to the initiating agency." The majority of States encouraged OCSE to take the approach in this rule under § 303.7(d)(9) rather than have duplicate income withholding orders in place against the same wages.

3. Comment: Another commenter requested that the regulation establish a time frame for the initiating State to issue the new income withholding order under proposed § 303.7(d)(10).

Response: OCSE does not agree a time frame is required. An initiating State that requests that the responding State stop its income withholding order and close its case is motivated to enforce its own case. We believe, in these circumstances, that the initiating State will issue a direct income withholding order in an appropriate time frame.

4. Comment: One commenter asked for clarification that the requirement to stop income withholding and close an intergovernmental case under proposed § 303.7(d)(10) applies in cases when the responding agency is only taking an income withholding action and is not also involved in a pending contempt proceeding for avoiding employment. The commenter is concerned about the effect this rule may have on the responding agencies' use of contempt proceedings as an enforcement tool in interstate cases, since an initiating State may elect to close the interstate case before the responding agency is able to complete the contempt process.

Response: The responding State requirement to stop income withholding and close an interstate IV-D case under § 303.7(d)(9) of the final rule applies in any interstate IV-D case, unless the States involved reach an alternative agreement. While an initiating State may ask a responding State to close its interstate case before the responding State can

complete contempt proceedings in the case, the States may reach an alternative agreement that allows the contempt proceeding to ensue.

5. Comment: One commenter asked for confirmation that, while case closure criteria listed under § 303.11(b), which uses permissive language, give States the option to close cases, the requirement for responding States to close interstate IV-D cases at the request of the initiating State under proposed § 303.7(d)(10) [final rule § 303.7(d)(9)] is a mandate.

Response: The commenter's understanding is correct. The case closure rules under § 303.11(b) give States the option to close cases if certain conditions are met, but does not require States to close these cases. In contrast, § 303.7(d)(9) requires the responding State to stop the income withholding order and close its corresponding case within 10 working days of receipt of such instructions from the initiating State. Because this requirement is mandatory, OCSE purposely placed it in the intergovernmental regulation rather than under the case closure rule.

In the final rule § 303.7(d)(9), OCSE has replaced the words "a request" with the word "instructions," so that § 303.7(d)(9) now reads, in part: "Within 10 working days of receipt of instructions for case closure from an initiating State agency under paragraph (c)(12) of this section…." OCSE replaced the word "request" to avoid any confusion that the requirement is optional when, in fact, it is mandatory. In addition, using the word "instructions" is consistent with the language in the corresponding initiating State

responsibilities section, under final rule paragraph (c)(12), which uses the word "instruct." We also inserted the term "State" to clarify that the instructions for case closure under paragraph (c)(12) come from an initiating State agency.

Section 303.7(e)—Payment and Recovery of Costs in Intergovernmental IV-D Cases

Section 303.7(e)(1)—Payment and recovery of costs

1. Comment: Approximately eight commenters submitted their reactions to proposed § 303.7(e)(1), which reorganized and revised requirements for the payment and recovery of costs in former § 303.7(d). This section requires responding IV-D agencies to pay the costs of processing intergovernmental cases, including the costs of genetic testing. In the former rule, the initiating State had been responsible for these costs. Five commenters supported shifting the responsibility to pay for the costs of genetic testing from the initiating State to the responding State. One of these commenters said she believed the change would make intergovernmental case processing more efficient and effective.

A few commenters, however, were concerned about the impact the shift in responsibility for the costs of genetic testing would have on statewide automated systems. One of these commenters requested that OCSE recognize the time and cost associated with implementing this change on statewide systems. At least one of these commenters objected to the change entirely, citing an undue burden on larger States and a disincentive for initiating States to opt for long-arm solutions in establishing paternity.

Response: OCSE agrees with the majority of the commenters that requiring responding States to pay genetic testing costs, in addition to other costs in processing intergovernmental cases, is responsive to State concerns and in the long run simplifies interstate case processing. As stated earlier under the general comments section, States will have time to make needed adjustments to their statewide systems in order to implement changes associated with this part of the rule.

OCSE appreciates concerns that this change may burden some larger States. However, because the costs of genetic testing are low and States receive Federal reimbursement on two-thirds of program costs, and also may choose to recover costs, this should not be an undue burden on States. OCSE does not anticipate that this change will cause initiating States to choose a two-State solution for establishing paternity over possible long-arm solutions.

2. Comment: Two commenters objected to the mandate in proposed § 303.7(e)(1) that a responding agency must seek a judgment for the costs of paternity testing. These commenters argued that the responsibility for responding agencies to recover costs for genetic testing by obtaining a judgment should be optional. Commenters made the same argument concerning § 303.7(d)(6)(i), which required responding States to provide any necessary services as it would in an intrastate case, including "attempting to obtain a judgment for costs should paternity be established." One of these commenters pointed out that section 466(a)(5)(B)(ii)(I) of the Act states that while the State agency must pay for genetic testing, the State may "elect" to recoup those costs and thus is not required to

do so. The commenters suggested revising § 303.7(e)(1) by substituting the term "may" for "must."

Response: OCSE agrees that responding States should not be required to seek a judgment for the costs of genetic testing from the alleged father once his paternity is established, since responding States are now responsible for absorbing these costs under the new section 303.7(e)(1). Therefore, we have changed the language in this paragraph to read, in part: "…If paternity is established, the responding agency, at its election, may seek a judgment for the costs of testing from the alleged father who denied paternity." This change also conforms to the change made in proposed § 303.7(d)(6)(i), which clarified that responding States may elect to obtain a judgment for genetic testing costs should paternity be established.

Section 303.7(e)(2)—Recovery of costs

1. Comment: In regard to the prohibition under proposed § 303.7(e)(2) from recovering costs from an FRC or from a foreign obligee, one commenter questioned why international cases were treated differently from interstate cases in this context.

Response: Section 454(32)(A) of the Act requires that States "provide that no applications will be required from, and no costs will be assessed for…services against, the foreign reciprocating country or foreign obligee (but costs may, at State option, be assessed against the obligor)." Therefore, as required by Federal law, States may not

collect fees from foreign obligees or FRCs, which are countries with which the United States has a reciprocal agreement under section 459A of the Act.

Section 303.11—Case closure criteria

1. Comment: One commenter requested an additional case closure criterion under § 303.11(b) that permits responding States to close interstate cases in instances when initiating States have made requests that cannot be completed. The commenter offered two examples. In one example, the initiating State has asked the responding State to establish paternity in the case of a man and a woman; however, the woman was previously married to another man whom the court had found to be the father during the divorce proceedings. In a second example, the initiating State has erroneously sent an interstate case for establishment when the case is really a modification case.

Response: In general, if a case is sent to a responding State in error or the responding State cannot take the action requested, we believe that the responding State should be able to resolve the issue by communicating directly with the initiating agency and asking the agency to revise the request or rescind the referral entirely. With respect to the second example, rather than closing this case, we believe it is more appropriate for States to communicate with each other to secure the necessary documentation to proceed to modify the support order, if the responding State has the jurisdiction to do so.

If the initiating agency is not responsive to requests for more or accurate information, the responding State has grounds to close the case under the case closure criterion in

§ 303.11(b)(12): "the IV-D agency documents failure by the initiating agency to take an action which is essential for the next step in providing services." Before closing the case, however, the responding State must follow the procedure described under § 303.11(c) that requires the responding State to notify the initiating agency in writing 60 calendar days prior to closure of the case of its intent to close the case.

2. Comment: One commenter took issue with the statement in the preamble of the proposed rule that: "[i]n intergovernmental cases, a responding State IV-D agency may apply any of the criteria for case closure set out in current regulations at 45 CFR 303.11. Existing paragraphs (b)(1) through (b)(11) pertain to all IV-D cases." The commenter said that responding States have previously only been allowed to close cases with the permission of the initiating State and could not unilaterally close cases under criteria in § 303.11(b)(1) through (11). In fact, the commenter points out, case closure criterion under § 303.11(b)(12) was created (as noted in the final rule on case closure, OCSE-AT-99-04) to address the problem that responding States had been required to keep cases open if the initiating State did not grant permission to close the case, even when conditions existed that fit other case closure criteria, such as the responding State was not able to locate the noncustodial parent or had located him or her in another State.

In summary, the commenter asked for clarification as to whether a responding State may close a case based on criteria set out in current regulations at 45 CFR 303.11(b)(1) through (b)(11), or must the responding State use § 303.11(b)(12) to document lack of cooperation by the initiating State in order to close the case.

Response: The commenter is correct. A State may not unilaterally close intergovernmental cases under case closure criteria in § 303.11(b)(1) through (11) without the permission of the initiating agency. In general, the initiating agency decides whether to open or close an intergovernmental case. In order for a responding State to close an intergovernmental case, without permission from the initiating agency, the responding State must use § 303.11(b)(12) and document lack of cooperation by the initiating agency. This case closure criterion, which enables a responding State to close a case when it documents failure by the initiating agency to take an action essential for providing services, was devised so that responding States would have grounds to close cases on which they could not proceed, provided they give 60 calendar days notice to the initiating agency, as required under § 303.11(c).

This new rule provides three new case closure criteria that also apply to responding States, in addition to § 303.11(b)(12). The first of these new criteria is § 303.11(b)(13), which allows the responding State to close a case when the initiating agency provides notification that it has closed its case under proposed § 303.7(c)(12) [(c)(11) in the final rule]. This new criterion formalizes and provides a 10-working-days time frame under § 303.7(c)(11) for the well-established practice of a responding State closing intergovernmental cases when permitted by the initiating agency, in this instance, due to the closure of the initiating State's case.

In consideration of this comment, the second of the new case closure criteria addresses the situation where an initiating agency desires to keep its case open, but no longer needs the responding State's intergovernmental services. Section 303.11(b)(14) allows the responding State to close its case when: "the initiating agency has notified the responding State that its intergovernmental services are no longer needed."

The third new case closure rule applicable to responding States is the requirement under § 303.7(d)(9) for a responding State to stop an income withholding order and close an intergovernmental case within 10 working days of receipt of instructions from an initiating agency to do so. Unlike the criteria under case closure §303.11(b)(12) through (14), this interstate case closure rule is mandatory.

In consideration of this comment, OCSE has made a change to § 303.7(d)(10) in the final rule [proposed § 303.7(d)(11)]. The proposed rule required a responding State to notify an initiating agency when a case was closed pursuant to § 303.11, implying incorrectly that a responding State could close an intergovernmental case under any of the case closure criteria under this part. The final rule clarifies the exact criteria under which a responding State may close a case and would, therefore, be required to notify the initiating agency. The final regulation under § 303.7(d)(10) now reads:

> "Notify the initiating agency when a case is closed pursuant to § 303.11(b)(12) through (14) and § 303.7(d)(9)."

Section 303.11(b)(12)—Lack of cooperation by initiating agency

1. Comment: One commenter was in support of the case closure criterion under proposed § 303.7(b)(12), which allows responding States to close cases based on lack of cooperation by the initiating agency. However, the commenter asked OCSE to establish a time frame for when the responding States should implement closing cases under this criterion.

Response: A time frame is currently established under § 303.11(c) of the regulations: "the [responding] State…in an interstate case, meeting the criteria under (b)(12), [must notify] the initiating State, in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the…initiating State supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order…."

We realize conforming changes to § 303.11(c) are necessary to indicate that responsibility for a responding State to provide case closure notice under § 303.11(b)(12) to an initiating agency, which could be a country or Tribe as well as another State, and that the responding State must keep the case open if that initiating agency supplies useable information in response to the notice. Therefore, in § 303.11(c), we have substituted the word "intergovernmental" for "interstate" and "initiating agency" for "initiating State."

The revised § 303.11(c) now reads: "In cases meeting the criteria in paragraphs (b)(1) through (6) and (10) through (12) of this section, the State must notify the recipient of

services, or in an intergovernmental case meeting the criteria for closure under (b)(12), the initiating agency, in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the recipient of services or the initiating agency supplies information in response to the notice…."

2. Comment: One commenter said that responding States are consistently closing interstate cases without the direction of the initiating State, or under case closure § 303.11(b)(12), without following proper procedures. In order to provide clear instruction to responding State caseworkers as to their role in case closure, the commenter asked that OCSE re-publish the following statement from the preamble of the proposed rule: "Again, we note that the election to close an interstate case involving two States belongs exclusively to the initiating agency."

Response: OCSE agrees that the decision to close an intergovernmental case should only be made by the initiating agency, with the noted exception, under § 303.11(b)(12), of cases for which the State IV-D agency documents failure by the initiating agency to take an action essential to the responding State's ability to provide services. If a responding State does move to close a case as allowed under § 303.11(b)(12), it must provide 60-calendar-days written notice to the initiating agency, as required under § 303.11(c).

Section 303.11(b)(13)—Closing a case already closed by initiating State

1. Comment: Proposed § 303.11(b)(13) allows the responding State to close its interstate case provided the initiating State notified the responding State that it had closed its case pursuant to proposed § 303.7(c)(12) [final rule, § 303.7(c)(11)]. (Final rule,

§ 303.7(c)(11) requires the initiating State to notify the responding agency of case closure within 10 working days of closing a case under § 303.11 and the basis for this case closure.)

One commenter requested clarification that upon receipt of notification that an initiating State had closed its case pursuant to § 303.11, the responding State would have authority, under § 303.11(b)(13), to close its case without having another basis, such as a court order.

Response: Yes, a responding State would have the authority to close its IV-D case upon receipt of notification that an initiating State had closed its case pursuant to § 303.11.

Section 308.2—Required program compliance criteria

1. Comment: One commenter suggested that OCSE make conforming changes to § 308.2 if any changes are made to § 303.7 based on comments made.

Response: In the final rule, we made conforming changes to §§ 308.2(b)(1), (c)(1) and (2), and (f)(1) and (g) for consistency with changes made in response to comments to proposed § 303.7.

IV. Impact Analysis

Paperwork Reduction Act of 1995

There is a new requirement imposed by this rule. Proposed § 303.7(d)(5) adds a notice requirement where the initiating agency has requested a controlling order determination. In this case, the responding agency must: "(i) File the controlling order determination request with the appropriate tribunal in its State within 30 calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later."

For this new regulatory requirement statewide Child Support Enforcement systems are already required to have the functionality to generate the documents necessary to establish an order of support. This new regulatory requirement is considered a minor change or enhancement to a statewide IV-D system.

Under paragraph (d)(5)(ii) of the section, the responding agency must: "Notify the initiating State agency, the Controlling Order State and any State where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within 30 calendar days of receipt of the determination from the tribunal."

This provision should not increase the information collection burden on the State(s) because a Child Support Enforcement Network (CSENet) transaction for transmitting information about the determination of the controlling order to other States already exists. CSENet already has a transaction: *ENF Provide—GSCOE–enforcement — Provision of information, new controlling order.* It is sent by the responding State—the transaction is used to reply to an enforcement request notifying the initiating jurisdiction that a new controlling support order is in effect. The amount of the reconciled arrearages can also be transmitted via CSENet in an information data block.

There were no public comments regarding this impact analysis following the publication of the Notice of Proposed Rulemaking in the Federal Register on December 8, 2008 (73 FR 74408). The estimated burden has not changed in the final rule.

The total estimated burden for the change described above is:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents 54	Average burden hours per response	Total burden hours
Systems modification	One time system enhancement	60 labor hours per State to modify statewide IV-D system.	3,240 hours.

It should be noted that the requirements of the Paperwork Reduction Act of 1995 [44 U.S.C. 3507(d)], regarding reporting and recordkeeping, apply to the federally-mandated intergovernmental forms referenced in the regulations, (OMB No. 0970–0085). The Office of Management and Budget has reauthorized the use of these forms until January 31, 2011.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), this final rule will not result in a significant impact on a

substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. This final rule provides solutions to problems in securing child support and paternity determinations for children in situations where the parents and children live apart and in different jurisdictions and the Department has determined that they are consistent with the priorities and principles of the Executive Order. There are minimal costs associated with these proposed rules.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rules and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the proposed rule.

The Department has determined that this rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review

This final rule is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. The required review of the regulations and policies to determine their effect on family well-being has been completed, and this rule will have a positive impact on family well-being as defined in the legislation by helping to ensure that parents support their children, even when they reside in separate jurisdictions, and will strengthen personal responsibility and increase disposable family income.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on

State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism impact as defined in the Executive Order.

List of Subjects

45 CFR Part 301

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

45 CFR Part 302

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

45 CFR Part 303

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

45 CFR Part 305

Child support, Grant programs/social programs, Accounting.

45 CFR Part 308

Auditing, Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated:

_____

Carmen R. Nazario

Assistant Secretary

for Children and Families

Approved:

_____

Kathleen Sebelius

Secretary of Health and Human Services

For the reasons discussed above, title 45 CFR chapter III is amended as follows:

PART 301-STATE PLAN APPROVAL AND GRANT PROCEDURES

1. The authority citation for part 301 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1301, and 1302

2. Amend § 301.1 by republishing the introductory text and adding the following definitions alphabetically:

Sec. 301.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

* * * * *

Central Authority means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the Act.

* * * * *

Controlling Order State means the State in which the only order was issued or, where multiple orders exist, the State in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued.

Country means a foreign country (or a political subdivision thereof) declared to be an FRC under section 459A of the Act and any foreign country (or political subdivision thereof) with which the State has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with Federal law pursuant to section 459A(d) of the Act.

* * * * *

Form means a federally-approved document used for the establishment and enforcement of support obligations whether compiled or transmitted in written or electronic format, including but not limited to the Income Withholding for Support form, and the National Medical Support Notice. In interstate IV-D cases, such forms include those used for child support enforcement proceedings under the UIFSA. Form also includes any federally-mandated IV-D reporting form, where appropriate.

Initiating agency means a State or Tribal IV-D agency or an agency in a country, as defined in this rule, in which an individual has applied for or is receiving services.

Intergovernmental IV-D case means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between States, Tribes, and countries. An intergovernmental IV-D case also may include cases in which a State agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State.

Interstate IV-D case means a IV-D case in which the noncustodial parent lives and/or works in a different State than the custodial parent and child(ren) that has been referred by an initiating State to a responding State for services. An interstate IV-D case also may include cases in which a State is seeking only to collect support arrearages, whether owed to the family or assigned to the State.

* * * * *

One-state remedies means the exercise of a State's jurisdiction over a non-resident parent or direct establishment, enforcement, or other action by a State against a non-resident parent in accordance with the long-arm provision of UIFSA or other State law.

* * * * *

Responding agency means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case.

* * * * *

Tribunal means a court, administrative agency, or quasi-judicial entity authorized under State law to establish, enforce, or modify support orders or to determine parentage.

Uniform Interstate Family Support Act (UIFSA) means the model act promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and mandated by section 466(f) of the Act to be in effect in all States.

PART 302-STATE PLAN REQUIREMENTS

3. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a (a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. Revise § 302.36 to read as follows:

Sec. 302.36 Provision of services in intergovernmental IV-D cases.

(a) The State plan shall provide that, in accordance with § 303.7 of this chapter, the State will extend the full range of services available under its IV-D plan to:

(1) Any other State;

(2) Any Tribal IV-D program operating under § 309.65(a) of this chapter; and

(3) Any country as defined in § 301.1 of this chapter.

(b) The State plan shall provide that the State will establish a central registry for intergovernmental IV-D cases in accordance with the requirements set forth in § 303.7(b) of this chapter.

PART 303-STANDARDS FOR PROGRAM OPERATIONS

5. The authority citation for part 303 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

6. Revise § 303.7 to read as follows:

Sec. 303.7 Provision of services in intergovernmental IV-D cases.

(a) General responsibilities. A State IV-D agency must:

(1) Establish and use procedures for managing its intergovernmental IV-D caseload that ensure provision of necessary services as required by this section and include maintenance of necessary records in accordance with § 303.2 of this part;

(2) Periodically review program performance on intergovernmental IV-D cases to evaluate the effectiveness of the procedures established under this section;

(3) Ensure that the organizational structure and staff of the IV-D agency are adequate to provide for the administration or supervision of the following functions specified in § 303.20(c) of this part for its intergovernmental IV-D caseload: intake; establishment of paternity and the legal obligation to support; location; financial assessment; establishment of the amount of child support; collection; monitoring; enforcement; review and adjustment; and investigation;

(4) Use federally-approved forms in intergovernmental IV-D cases, unless a country has provided alternative forms as part of its chapter in A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries. When using a paper version, this requirement is met by providing the number of complete sets of required documents needed by the responding agency, if one is not sufficient under the responding agency's law;

(5) Transmit requests for information and provide requested information electronically to the greatest extent possible;

(6) Within 30 working days of receiving a request, provide any order and payment record information requested by a State IV-D agency for a controlling order determination and reconciliation of arrearages, or notify the State IV-D agency when the information will be provided;

(7) Notify the other agency within 10 working days of receipt of new information on an intergovernmental case; and

(8) Cooperate with requests for the following limited services: quick locate, service of process, assistance with discovery, assistance with genetic testing, teleconferenced hearings, administrative reviews, high-volume automated administrative enforcement in interstate cases under section 466(a)(14) of the Act, and copies of court orders and payment records. Requests for other limited services may be honored at the State's option.

(b) Central registry.

(1) The State IV-D agency must establish a central registry responsible for receiving, transmitting, and responding to inquiries on all incoming intergovernmental IV-D cases.

(2) Within 10 working days of receipt of an intergovernmental IV-D case, the central registry must:

(i) Ensure that the documentation submitted with the case has been reviewed to determine completeness;

(ii) Forward the case for necessary action either to the central State Parent Locator Service for location services or to the appropriate agency for processing;

(iii) Acknowledge receipt of the case and request any missing documentation; and

(iv) Inform the initiating agency where the case was sent for action.

(3) If the documentation received with a case is incomplete and cannot be remedied by the central registry without the assistance of the initiating agency, the central registry must forward the case for any action that can be taken pending necessary action by the initiating agency.

(4) The central registry must respond to inquiries from initiating agencies within 5 working days of receipt of the request for a case status review.

(c) Initiating State IV-D agency responsibilities. The initiating State IV-D agency must:

(1) Determine whether or not there is a support order or orders in effect in a case using the Federal and State Case Registries, State records, information provided by the recipient of services, and other relevant information available to the State;

(2) Determine in which State a determination of the controlling order and reconciliation of arrearages may be made where multiple orders exist;

(3) Determine whether the noncustodial parent is in another jurisdiction and whether it is appropriate to use its one-state remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding;

(4) Within 20 calendar days of completing the actions required in paragraphs (1) through (3) and, if appropriate, receipt of any necessary information needed to process the case:

(i) ask the appropriate intrastate tribunal, or refer the case to the appropriate responding State IV-D agency, for a determination of the controlling order and a reconciliation of arrearages if such a determination is necessary; and

(ii) refer any intergovernmental IV-D case to the appropriate State Central Registry, Tribal IV-D program, or Central Authority of a country for action, if one-state remedies are not appropriate;

(5) Provide the responding agency sufficient, accurate information to act on the case by submitting with each case any necessary documentation and intergovernmental forms required by the responding agency;

(6) Within 30 calendar days of receipt of the request for information, provide the responding agency with an updated intergovernmental form and any necessary additional documentation, or notify the responding agency when the information will be provided;

(7) Notify the responding agency at least annually, and upon request in an individual case, of interest charges, if any, owed on overdue support under an initiating State order being enforced in the responding jurisdiction;

(8) Submit all past-due support owed in IV-D cases that meet the certification requirements under § 303.72 of this part for Federal tax refund offset.

(9) Send a request for review of a child support order to another State within 20 calendar days of determining that a request for review of the order should be sent to the other State and of receipt of information from the requestor necessary to conduct the review in accordance with section 466(a)(10) of the Act and § 303.8 of this part;

(10) Distribute and disburse any support collections received in accordance with this section and §§ 302.32, 302.51, and 302.52 of this chapter, sections 454(5), 454B, 457, and 1912 of the Act, and instructions issued by the Office;

(11) Notify the responding agency within 10 working days of case closure that the initiating State IV-D agency has closed its case pursuant to § 303.11 of this part, and the basis for case closure;

(12) Instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice, with respect to the same case, to the same or another employer unless the two States reach an alternative agreement on how to proceed; and

(13) If the initiating agency has closed its case pursuant to § 303.11 and has not notified the responding agency to close its corresponding case, make a diligent effort to locate the obligee, including use of the Federal Parent Locator Service and the State

Parent Locator Service, and accept, distribute and disburse any payment received from a responding agency.

(d) Responding State IV-D agency responsibilities. Upon receipt of a request for services from an initiating agency, the responding State IV-D agency must:

(1) Accept and process an intergovernmental request for services, regardless of whether the initiating agency elected not to use remedies that may be available under the law of that jurisdiction;

(2) Within 75 calendar days of receipt of an intergovernmental form and documentation from its central registry:

(i) Provide location services in accordance with §303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the noncustodial parent;

(ii) If unable to proceed with the case because of inadequate documentation, notify the initiating agency of the necessary additions or corrections to the form or documentation;

(iii) If the documentation received with a case is incomplete and cannot be remedied without the assistance of the initiating agency, process the case to the extent possible pending necessary action by the initiating agency;

(3) Within 10 working days of locating the noncustodial parent in a different State, the responding agency must return the forms and documentation, including the new location, to the initiating agency, or, if directed by the initiating agency, forward/transmit the forms and documentation to the central registry in the State where the noncustodial

parent has been located and notify the responding State's own central registry where the case has been sent.

(4) Within 10 working days of locating the noncustodial parent in a different political subdivision within the State, forward/transmit the forms and documentation to the appropriate political subdivision and notify the initiating agency and the responding State's own central registry of its action;

(5) If the request is for a determination of controlling order:

(i) File the controlling order determination request with the appropriate tribunal in its State within 30 calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later; and

(ii) Notify the initiating State agency, the Controlling Order State and any State where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within 30 calendar days of receipt of the determination from the tribunal;

(6) Provide any necessary services as it would in an intrastate IV-D case including:

(i) Establishing paternity in accordance with § 303.5 of this part and, if the agency elects, attempting to obtain a judgment for costs should paternity be established;

(ii) Establishing a child support obligation in accordance with § 302.56 of this chapter and §§ 303.4, 303.31 and 303.101 of this part;

(iii) Reporting overdue support to Consumer Reporting Agencies, in accordance with section 466(a)(7) of the Act and § 302.70(a)(7) of this chapter;

(iv) Processing and enforcing orders referred by an initiating agency, whether pursuant to UIFSA or other legal processes, using appropriate remedies applied in its own cases in accordance with §§ 303.6, 303.31, 303.32, 303.100 through 303.102, and 303.104 of this part, and submit the case for such other Federal enforcement techniques as the State determines to be appropriate, such as administrative offset under 31 CFR 285.1 and passport denial under section 452(k) of the Act;

(v) Collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the initiating agency. The IV-D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter, and include the responding State's case identifier and locator code, as defined in accordance with instructions issued by this Office; and

(vi) Reviewing and adjusting child support orders upon request in accordance with § 303.8 of this part;

(7) Provide timely notice to the initiating agency in advance of any hearing before a tribunal that may result in establishment or adjustment of an order;

(8) Identify any fees or costs deducted from support payments when forwarding payments to the initiating agency in accordance with paragraph (d)(6)(v) of this section;

(9) Within 10 working days of receipt of instructions for case closure from an initiating State agency under paragraph (c)(12) of this section, stop the responding State's income withholding order or notice and close the intergovernmental IV-D case, unless the two States reach an alternative agreement on how to proceed; and

(10) Notify the initiating agency when a case is closed pursuant to §§ 303.11(b)(12) through (14) and 303.7(d)(9) of this part.

(e) Payment and recovery of costs in intergovernmental IV-D cases.

(1) The responding IV-D agency must pay the costs it incurs in processing intergovernmental IV-D cases, including the costs of genetic testing. If paternity is established, the responding agency, at its election, may seek a judgment for the costs of testing from the alleged father who denied paternity.

(2) Each State IV-D agency may recover its costs of providing services in intergovernmental non-IV-A cases in accordance with § 302.33(d) of this chapter, except that a IV-D agency may not recover costs from an FRC or from a foreign obligee in that FRC, when providing services under sections 454(32) and 459A of the Act.

7. Amend § 303.11 by revising paragraph (b)(12), adding new paragraphs (b)(13) and (b)(14), and revising (c) to read as follows:

Section 303.11 Case closure criteria.

* * * * *

(b)* * *

(12) The IV-D agency documents failure by the initiating agency to take an action which is essential for the next step in providing services;

(13) The initiating agency has notified the responding State that the initiating State has closed its case under § 303.7(c)(11); and

(14) The initiating agency has notified the responding State that its intergovernmental services are no longer needed.

(c) In cases meeting the criteria in paragraphs (b)(1) through (6) and (10) through (12) of this section, the State must notify the recipient of services, or in an intergovernmental case meeting the criteria for closure under (b)(12), the initiating agency, in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the recipient of services or the initiating agency supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order, or, in the instance of paragraph (b)(10) of this section, if contact is reestablished with the recipient of services. If the case is closed, the former recipient of services may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application for IV-D services and paying any applicable application fee.

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PART 305-PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

8. The authority citation for part 305 is revised to read:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658 and 1302.

9. Amend § 305.63 by:

a. Removing "interstate" and adding "intergovernmental" in its place wherever it occurs in paragraphs (c)(2) through (5) and paragraphs (d)(1) through (4);

b. Removing "§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10)" and adding "§303.7(a), (b), (c), (d)(1) through (5) and (7) through (10), and (e)" in its place wherever it occurs in paragraphs (c)(2) through (5); and

c. Removing "§ 303.7(a), (b) and (c)(4) through (6), (c)(8) and (9)" and adding "§ 303.7(a)(4) through (8), (b), (c), (d)(2) through (5) and (7) and (10)" in its place wherever it occurs in paragraphs (d)(1) through (4).

PART 308 – ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

10. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 654(15)(A) and 1302.

11. Amend § 308.2 by:

a. Removing "interstate" and adding "intergovernmental" in its place wherever it occurs in paragraphs (b)(1), (c)(1) and (2), and (f)(1);

b. Removing "§ 303.7(a), (b) and (c)(4) through (6), (c)(8) and (9)" and adding "§ 303.7(a)(4) through (8), (b), (c), (d)(2) through (5) and (7) and (10)" in its place wherever it occurs in paragraphs (b)(1), (c)(1) and (2), and (f)(1); and

c. Revising paragraph (g) to read as follows:

§ 308.2 Required program compliance criteria.

* * * * *

(g) Intergovernmental services. A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. For all intergovernmental cases requiring services during the review period, determine the last required action and determine whether the action was taken during the appropriate time frame:

(1) Initiating intergovernmental cases:

(i) Except when a State has determined that use of one-state remedies is appropriate in accordance with § 303.7(c)(3) of this Chapter, within 20 calendar days of

completing the actions required in § 303.7(c)(1) through (3) of the Chapter, and, if appropriate, receipt of any necessary information needed to process the case, ask the appropriate intrastate tribunal or refer the case to the responding State agency, for a determination of the controlling order and a reconciliation of arrearages if such a determination is necessary, and refer any intergovernmental IV-D case to the appropriate State Central Registry, Tribal IV-D program, or Central Authority of a country for action, if one-state remedies are not appropriate;

(ii) If additional information is requested, providing the responding agency with an updated form and any necessary additional documentation, or notify the responding agency when the information will be provided, within 30 calendar days of the request pursuant to § 303.7(c)(6) of this chapter;

(iii) Within 20 calendar days after determining that a request for review of the order should be sent to another State IV-D agency and of receipt of information necessary to conduct the review, sending a request for review and adjustment pursuant to § 303.7(c)(9) of this chapter;

(iv) Within 10 working days of closing its case pursuant to § 303.11 of this chapter, notifying the responding agency pursuant to § 303.7(c)(11) of this chapter;

(v) Within 10 working days of receipt of new information on a case, notifying the responding State pursuant to § 303.7(a)(7) of this chapter;

(vi) Within 30 working days of receiving a request, providing any order and payment record information requested by a responding agency for a controlling order determination and reconciliation of arrearages, or notify the State IV-D agency when the information will be provided pursuant to § 303.7(a)(6) of this chapter.

(2) Responding intergovernmental cases:

(i) Within 10 working days of receipt of an intergovernmental IV-D case, the central registry reviewing submitted documentation for completeness, forwarding the case to the State Parent Locator Service (SPLS) for location services or to the appropriate agency for processing, acknowledging receipt of the case, and requesting any missing documentation from the initiating agency, and informing the initiating agency where the case was sent for action, pursuant to § 303.7(b)(2) of this chapter;

(ii) The central registry responding to inquiries from initiating agencies within 5 working days of a receipt of request for case status review pursuant to § 303.7(b)(4) of this chapter;

(iii) Within 10 working days of locating the noncustodial parent in a different jurisdiction within the State or in a different State, forwarding/transmitting the forms and documentation in accordance with Federal requirements pursuant to § 303.7(d)(3) and (4) of this chapter;

(iv) Within two business days of receipt of collections, forwarding any support payments to the initiating jurisdiction pursuant to section 454B(c)(1) of the Act;

(v) Within 10 working days of receipt of new information notifying the initiating jurisdiction of that new information pursuant to § 303.7(a)(7) of this chapter;

(vi) Within 30 working days of receiving a request, providing any order and payment record information requested by an initiating agency for a controlling order determination and reconciliation of arrearages, or notify the State IV-D agency when the information will be provided pursuant to § 303.7(a)(6) of this chapter;

(vii) Within 10 working days of receipt of instructions for case closure from an initiating agency under § 303.7(c)(12) of this chapter, stopping the responding State's income withholding order or notice and closing the responding State's case, pursuant to § 303.7(d)(9) of this chapter, unless the two States reach an alternative agreement on how to proceed.