(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

Child Support Enforcement Program; Reasonable Quantitative Standard for Review and Adjustment of Child Support Orders

AGENCY: Office of Child Support Enforcement (OCSE), Health and Human Services (HHS).

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule revises existing regulations on review and adjustment of child support orders to reinstate a rule which was in place since 1993. The change permits States to once again use reasonable quantitative standards in adjusting an existing child support award amount after conducting a review of the order, regardless of the method of review used.

DATES: These regulations are effective December 28, 2004. Consideration will be given to comments received February 28, 2005.

ADDRESSES: Send comments to: Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attention: Director, Division of Policy, Mail Stop: OCSE/DP. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address. To download an electronic version of the rule, you may access *http://www.regulations.gov.* You may also transmit written comments electronically via the Internet at *http://www.regulations.acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Matheson, Division of Policy, OCSE, 202–401–9386, e-mail: *ematheson@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The provisions of this regulation pertaining to review and adjustment of child support orders are published under the authority granted to the Secretary by section 466(a) of the Social Security Act (the Act), 42 U.S.C. 666(a). Section 466(a) requires each State to have in effect laws requiring the use of specified procedures, consistent with this section of the Act and regulations of the Secretary, to increase the effectiveness of the Child Support Enforcement program. Review and adjustment of support orders at section 466(a)(10) of the Act is one of the required procedures.

Justification for Interim Final Rule

The Administrative Procedure Act requirements for notice of proposed rulemaking do not apply to rules when the agency finds that notice is impracticable, unnecessary or contrary to the public interest. We find proposed rulemaking unnecessary and contrary to the public interest, because the rule is not imposing new requirements or burdens on States, but is removing an administrative requirement and burden on agencies and families that was added to the technical corrections final regulation published in the **Federal Register** on May 12, 2003 (68 FR 25293). Without opportunity for public comment, that regulation implemented a substantive change to prior policy that was not warranted under any intervening amendment to the relevant statute. The change required States to adjust an order for support after a guidelines review, regardless of the amount by which the existing order is found to deviate from the State's support guidelines. The statute, as in effect before and after this change, provided that such adjustments were only required ''if appropriate.'' Prior to that regulation, since 1993, States could apply a reasonable quantitative standard for adjustment of an order regardless of the method of their review of the order. This regulation reinstates the prior rule with opportunity for public comment. Because the regulatory change published on May 12 did not allow for public comment, and this rule merely reinstates the prior regulation which was issued pursuant to notice and comment, advance notice is unnecessary.

Background

1992 Regulations

Under the authority of sections 466(a)(10) and 1102 of the Act, OCSE published regulations on review and adjustment of child support orders in 1992. They were effective in October, 1993. In the preamble to that regulation, the basis for seeking an adjustment to an order was described as paraphrased below.

In the 1992 regulation, 45 CFR 303.8(d) specified the requirements States had to meet in seeking adjustments to child support orders in IV–D cases. Paragraph (d)(1) required that an inconsistency between the existent child support order amount and the amount of child support which resulted from application of the State guidelines must be an adequate basis, under State law, for petitioning for an adjustment of an order in a IV–D case, whether or not the order was established using guidelines.

Paragraph (d)(2) of the 1992 regulation provided for an exception that allowed States to establish a quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency is adequate grounds for petitioning for adjustment of the order. That quantitative standard, or threshold, was to be used as a basis for determining whether the inconsistency was sufficient to justify proceeding with a petition or motion for adjustment of an award, not as a criterion for deciding whether to review. Threshold standards were not needed if States adjusted all orders regardless of the degree of inconsistency with the guidelines. However, thresholds could serve to prevent inundating the adjustment process with cases in which the variance was minimal between the current order amount and the amount that would result from an application of the guidelines.

The quantitative standard permitted by the 1992 regulation was meant to be used as a post-review decision-making tool. It was not intended to restrict the use of guidelines in setting and modifying support nor to limit the authority of the court or other authority to find, in a particular case, that an award based on guidelines was unfair or inappropriate. In making any adjustment to the amount of support, the judicial or administrative process still had to apply the State guidelines. Under regulations at 45 CFR 302.56, Guidelines for setting child support awards, the child support award calculated to be due under the guidelines was rebuttably presumed to be the correct amount of support to be paid.

1997 Action Transmittal

OCSE issued policy on review and adjustment of orders in OCSE–AT–97–10 on July 30, 1997, in response to

provisions of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, relating to review and adjustment. In that action transmittal, OCSE continued to permit States to use a reasonable quantitative standard for determining whether or not to adjust an order. Pertinent questions and answers from the action transmittal are summarized below.

Q. 4. Does the requirement to ''adjust the order in accordance with the guidelines * * * if the amount * * * differs'' preclude a State law providing a threshold deviation of, for example, 15% before an adjustment is deemed appropriate?

A. No. Section 466(a)(10)(A)(i)(I) of the Act, as amended by section 351 of Pub. L. 104–193, does not preclude a State law from providing a threshold deviation before an adjustment of an order is appropriate. First of all, according to section 466(a)(10)(A)(i) of the Act, the State must take ''into account the best interests of the child involved.'' A small reduction in support, or even an increase, because of a deviation in the guidelines' amount might not be in the child's best interests. Secondly, statute and regulations allow the State to adjust the order, or determine that there should be no adjustment, if appropriate, in accordance with the State's guidelines for setting child support awards. Given the latitude States have to apply cost-of-living adjustments, or to set thresholds if they use automated methods, it was stated that there was similar latitude for States to determine that small deviations are ''inappropriate'' for adjustment.

Given the complexity of the most States'' review and adjustment process, as well as State child support guidelines, it may not be in the child's best interest for parents, child support agencies, and courts to wrangle over very small amounts of money. The application of child support guidelines often involves far more than a simple calculation of a portion of a parent's income. Both the review process and the adjustment process are time-consuming and involve multiple parties in most States. Despite authority in the Federal statute, very few States have automated review processes in place and about half the States have court-based systems for adjusting orders.

Q. 7. Under section 466(a)(10)(A)(i)(I) of the Act, does ''if appropriate'' mean that if a State reviews a case under the 3-year cycle provision using State guidelines, it can determine not to adjust the order if the inconsistency between the current order and the guideline's amount does not meet the ''reasonable quantitative standard established by the State''?

A. Yes. Under section 466(a)(10)(A)(i)(I) of the Act, the language ''if appropriate, adjust the order'' is consistent with regulations which said that, if a State reviews a case under the 3-year cycle provision using State guidelines, it can determine not to adjust the order if the inconsistency between the current order and the guideline amount does not meet the ''reasonable quantitative standard established by the State''. Under the regulations, the State could establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support which resulted from application of the guidelines was adequate grounds for petitioning for adjustment of the order. Therefore, a reasonable quantitative standard could be used to determine not to adjust the order.

Q. 8. Is it only under section 466(a)(10)(A)(i)(III) that a State can establish a standard for determining when an adjustment is warranted?

A. No. Under both sections 466(a)(10)(A)(i)(I) (guidelines review) and (III) (automated review), as amended by section 351 of Pub. L. 104–193, it is appropriate for the State to use its threshold standard to determine if an adjustment is appropriate.

Q. 10. Under section 466(a)(10)(A)(ii) of the Act does ''if appropriate'' mean that a State can determine not to (re)adjust the order if the inconsistency between current and guideline support does not merit an adjustment based on the ''reasonable quantitative standard established by the State''?

A. Yes. Under section 466(a)(10)(A)(ii) of the Act (opportunity to contest an adjustment), a State can determine not to (re)adjust the order if the inconsistency between current and guideline support does not merit an adjustment based on the reasonable quantitative standard established by the State.

Provisions of the Regulation

In OCSE–AT–97–10, OCSE said it was working on a regulation to eliminate inconsistencies between title IV–D regulations and Pub. L. 104–193. That regulation was published in the **Federal Register** on May 12, 2003. (68 FR 25293). That regulation did not retain the regulatory policy described above. Rather, it limited use of the reasonable quantitative standard to adjustments in cases that were reviewed by automated methods. In the preamble to the May 12 rule, we said: ''We are revising paragraph (c) to clarify that States may use a quantitative standard only in cases involving the use of automated methods in accordance with section 466(a)(10)(A)(i)(III) of the Act. That section alone refers to orders being ''eligible for adjustment,'' recognizing there might be some standard set to determine eligibility for adjustment. The other two methods of review (guidelines and cost-of-living) do not contain this language. Sections 303.8(a) and (d) through (f) remain as published in the interim final rule.''

The change to paragraph (c) in the May 12 final rule was not required by any change in the underlying statute, and it clearly was not mandated by Pub. L. 104–193, as the statute was interpreted in OCSE–AT–97–10. Nor should the change have been issued in a final rule without opportunity for comment. The interim final regulation in today's **Federal Register** reinstates the original rule with opportunity for public comment.

Under this interim rule a State may establish a reasonable quantitative standard, based on either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order, regardless of the method of review. This interim final rule allows States to manage their resources and refrain from unreasonably small order adjustments that may be costly and perhaps involve changes to States' automated systems. Most States' review and adjustment process, as well as State child support guidelines, are complex and lengthy. The application of child support guidelines often involves far more than a simple calculation of a portion of a parent's income, including decisions with respect to child care, health insurance, and extraordinary medical expenses. Both the review process and the adjustment process are time-consuming and involve multiple parties in most states. Despite authority in the Federal statute for automated review and adjustment and cost-of-living increases, very few States have these automated review processes in place and about half the States have court-based, rather than administrative, systems for adjusting orders.

The rule minimizes the burden, stress and uncertainty families would face in opening up the orders to change despite little anticipated gain. In addition, the rule reduces complex agency and

tribunal record-keeping that could lead to errors and lessens the burden on employers who would need to respond to constantly adjusting income withholding orders to address small differences in the amount withheld.

It is important to note that § 303.8 continues to require States to review child support orders at least every 3 years, upon request of a parent in any case, and upon request of the State if there is an assignment of support rights under title IV–A of the Act, and make adjustments, if appropriate, if the reasonable quantitative standard for an adjustment is met. Further, under paragraph (b)(5) of this section, a State must have procedures under which a parent or other person who has standing may request a review and adjustment outside the regular 3-year (or shorter) cycle, and if the requesting party demonstrates a substantial change in circumstance, the State must adjust the order in accordance with its support guidelines.

Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this 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 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. The Department has determined that this rule is consistent with these priorities and principles because there is broad agreement among state IV–D agencies that removal of the burden, and reinstatement of prior policy, is necessary. Individuals, either those owing or those entitled to receive child support, will not be harmed, as only small adjustments (either up or down) in the amount of the child support obligation will be avoided. This regulation is considered a ''significant regulatory action'' under 3f of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

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 any 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 rule 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 rule.

We have determined that the interim final rule 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 governments.

Congressional Review

This regulation 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 proposed policy or regulations may 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. These regulations will not have an impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have Federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government''. This rule does not have Federalism implications for State or local governments as defined in the Executive Order.

List of Subjects in 45 CFR Part 303

Child support, Grant programs—social programs.

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

Dated: May 25, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

Date Approved: September 29, 2004.

Tommy G. Thompson,

Secretary of Health and Human Services.

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

PART 303—STANDARDS FOR PROGRAM OPERATIONS

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

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

§ 303.8 [Amended]

■ 2. In § 303.8, paragraph (c) is amended by removing ''using automated methods under paragraph (b)(1)(iii) of this section''.

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GENERAL SERVICES ADMINISTRATION

48 CFR Part 504

GSAR Amendment 2004–04; GSAR Case 2004–G509 (Change 12)

RIN 3090–AI00

General Services Administration Acquisition Regulation; Access to the Federal Procurement Data System

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by adding coverage to specify the rate that will be charged to non-governmental entities in exchange for permitting them to establish a direct computer connection with the Federal Procurement Data System database.

DATES: *Effective Date*: December 28, 2004.