(E) Secondary education schools (particularly those that have parenthood education curricula);

(F) Legal Aid agencies, and private attorneys; and

(G) Any similar public or private health, welfare or social services organization.

(2) The hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program must, at a minimum:

(i) Provide to both the mother and alleged father:

(A) Written materials about paternity establishment,

(B) The forms necessary to voluntarily acknowledge paternity,

(C) Notice, orally or through video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities or acknowledging paternity, and

(D) The opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

(ii) Provide the mother and alleged father the opportunity to voluntarily acknowledge paternity;

(iii) Afford due process safeguards; and

(iv) File signed original of voluntary acknowledgments or adjudications of paternity with the State registry of birth records (or a copy if the signed original is filed with another designated entity) for comparison with information in the State case registry.

(3) The hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program need not provide services specified in paragraph (g)(2) of this section in cases where the mother or alleged father is a minor or a legal action is already pending, if the provision of such services is precluded by State law.

(4) The State must require that a voluntary acknowledgment be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es).

(5) The State must provide to all hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program:

(i) Written materials about paternity establishment,

(ii) Form necessary to voluntarily acknowledge paternity, and

(iii) Copies of a written description of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity.

(6) The State must provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity, as necessary to operate the voluntary paternity establishment services in the hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program.

(7) The State must assess each hospital, State birth record agency, local birth record agency designated by the State, and other entity participating in the State's voluntary paternity establishment program that are providing voluntary paternity establishment services on at least an annual basis.

(8) Hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program must forward completed voluntary acknowledgments or copies to the entity designated by the State. If any entity other than the State registry of birth records is designated by the State, a copy must be filed with the State registry of birth records, in accordance with section 303.5(g)(2)(iv). Under State procedures, the designated entity must be responsible for promptly recording identifying information about the acknowledgments with a statewide database, and the IV–D agency must have timely access to whatever identifying information and documentation it needs to determine in accordance with § 303.5(h) if an acknowledgment has been recorded and to seek a support order on the basis of a recorded acknowledgment in accordance with § 303.4(f).

* * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

5. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

6. Section 304.20 is amended by revising paragraph (b)(2)(vi) through paragraph (b)(2)(viii) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

(b) * * *

(2) * * *

(vi) Payments up to $20 to hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program, under § 303.5(g) of this chapter, for each voluntary acknowledgment obtained pursuant to an agreement with the IV–D agency;

(vii) Developing and providing to hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program, under § 303.5(g) of this chapter, written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity; and

(viii) Reasonable and essential short-term training associated with the State's program of voluntary paternity establishment services under § 303.5(g).

* * * * *

[FR Doc. 99–5832 Filed 3–9–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

RIN 0970–AB82

Child Support Enforcement Program; Standards for Program Operations

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends Federal regulations which govern the case closure procedures for the child support enforcement program. The final rule clarifies the situations in which States may close child support cases and makes other technical changes.

EFFECTIVE DATE: The final rule is effective: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Betsy Matheson, Director, Division for Policy and Planning, Office of Child Support Enforcement, 202–401–9386. Hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 A.M. and 7:00 P.M.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule does not contain information collection provisions subject to review by the Office of

Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Statutory Authority

This regulation is issued under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Background

The Child Support Enforcement program was established under Title IV–D by the Social Services Amendments of 1974, for the purpose of establishing paternity and child support obligations, and enforcing support owed by noncustodial parents. At the request of the States, OCSE originally promulgated regulations in 1989 which established criteria for States to follow in determining whether and how to close child support cases. In the final Program Standards regulations dated August 4, 1989 (54 FR 32284), and issued in OCSE–AT–89–15, we gave examples of appropriate instances in which to close cases. In the Supplementary Information section accompanying the final regulations, we stated that the goal of the case closure regulations was not to mandate that cases be closed, but rather to clarify conditions under which cases may be closed. The regulations allowed States to close cases that were not likely to result in any collection and to concentrate their efforts on the cases that presented a likelihood of collection.

In an effort to be responsive to the President's Memorandum of March 4, 1995, which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate burdens on States, other governmental agencies or the private sector, and in compliance with section 204 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, OCSE formed a regulation reinvention workgroup to exchange views, information and advice with respect to the review of existing regulations in order to eliminate or revise those regulations that are outdated, unduly burdensome, or unproductive. This group is made up of representatives of Federal, State and local government elected officials and their staffs.

As part of the regulation reinvention effort, § 303.11 on case closure criteria was reviewed to determine what changes could be made to help States with their case closure process, while ensuring that all viable cases remained open. Somewhat earlier, the State IV–D Directors' Association had established a committee to examine the case closure issue. The committee developed several recommendations, which were considered in the development of the notice of proposed rulemaking, published in the **Federal Register** on February 24, 1998 (63 FR 9172). In preparing the notice of proposed rulemaking, we also consulted with several advocates and other interested parties and stakeholders, including custodial parents and groups advocating on their behalf, to discuss their concerns with the IV–D Directors' Association recommendations and about the case closure criteria in general. Thirty-one individuals or organizations provided comments to the proposed rule.

This final rule balances our concern that all children receive the help they need in establishing paternity and securing support, while being responsive to administrative concerns for maintaining caseloads that include only those cases in which there is adequate information or likelihood of successfully providing services. The circumstances under which a case could be closed include, for example, instances in which legitimate and repeated efforts over time to locate putative fathers or obligors are unsuccessful because of inadequate identifying or location information, or in interstate cases in which the responding State lacks jurisdiction to work a case and the initiating State has not responded to a request for additional information or case closure. Decisions to close cases are linked with notice to recipients of the intent to close the case and an opportunity to respond with information or a request that the case be kept open. The final rule balances good case management and workable administrative decisions with providing needed services, always erring in favor of including any case in which there is any chance of success. For example, cases must remain open even if there is no likelihood of immediate or great success in securing support, perhaps because of a period of incarceration.

Discussion of the Regulation

Description of Regulatory Provisions—-§ 303.11; Case Closure Criteria

This final rule revises § 303.11 to eliminate the term ''absent parent'' and replace it with the term ''noncustodial parent'' throughout, for consistency with preferred statutory terminology under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193.

Section 303.11(b)(1) as revised, provides that, ''There is no longer a current support order and arrearages are under $500 or unenforceable under State law[.]'' Previously, the only distinction between paragraphs (b)(1) and (b)(2) was whether the child had reached the age of majority. Since the criteria is the same for both subsections, the distinction is unnecessary. Therefore, the final rule removes the reference to the child's age, thereby eliminating any distinction between paragraphs (b)(1) and (b)(2). Accordingly, paragraph (b)(2) is removed. The removal of (b)(2) necessitates that paragraphs (b)(3) and (b)(4) be redesignated as paragraphs (b)(2) and (b)(3).

This final rule amends redesignated paragraph (b)(3) to include a new subparagraph (iv). Paragraph (b)(3)(iv) allows a case to be closed when the identity of the biological father is unknown, and cannot be identified after diligent efforts, including at least one interview by the Title IV–D agency with the recipient of services.

Paragraph (b)(5) is redesignated as paragraph (b)(4). This final rule amends redesignated paragraph (b)(4) by adding new subparagraphs (i) and (ii). Paragraph (b)(4) allows a case to be closed when the noncustodial parent's location is unknown, and the State has made diligent efforts in accordance with Section 303.3 of this part, all of which have been unsuccessful, to locate the noncustodial parent ''(i) over a three-year period when there is sufficient information to initiate automated locate efforts; or (ii) over a one-year period when there is not sufficient information to initiate automated locate efforts.''

Paragraphs (b)(6) through (b)(12) are renumbered as (b)(5) through (b)(11). In redesignated paragraphs (b)(8), (b)(10) and (b)(11) the term ''custodial parent'' is revised to read ''recipient of services'' to reflect that Title IV–D child support enforcement services may be requested by either the custodial or noncustodial parent.

Redesignated paragraph (b)(9) adds IV–D and food stamp agencies to the list of State agencies with the authority to make good cause determinations. The addition of the Title IV–D and food stamp agencies to this list is required by section 454(29) of the Act, which provides flexibility to the States in selecting the agency authorized to make good cause determinations. The Act allows States to place the responsibility for making the good cause determination in either the State IV-D agency or the State agency funded under part A, part E or Title XIX. In the case of the food stamp program, the Act

requires that the good cause determination in food stamp cases subject to referral to the State IV–D agency be administered by the food stamp agency itself. In addition, the final rule revises paragraph (b)(9) to expand good cause to include ''other exceptions'' from cooperation, to more accurately implement the requirements of section 454(29) of the Act. Finally, redesignated paragraph (b)(9) removes the reference to Federal AFDC regulations concerning the good cause determination because that regulation is obsolete.

Redesignated paragraph (b)(10) allows a nonassistance case to be closed when the State IV–D agency is unable to contact the service recipient within a 60 calendar day period despite an attempt by at least one letter, sent by first class, to the service recipient's last known address. In order to actually close the case, the State IV–D agency must send the letter required by paragraph (c) notifying the service recipient of the intent to close the case. This second letter is separate from the letter of contact described in paragraph (b)(10).

The final rule adds a new paragraph, (b)(12) to § 303.11. Paragraph (b)(12) allows a case to be closed when ''the IV–D agency documents failure by the initiating State to take an action which is essential for the next step in providing services.'' Under the previous case closure regulations, a responding State was not free to close a case without the permission of the initiating State. In some of these cases, the responding State may have been unable to locate the noncustodial parent, or may have located him or her in another State. If, in these instances, the initiating State failed to respond to the responding State's request for case closure, the responding State was obligated to leave the case open in its system. Similarly, if the initiating State failed to provide necessary information to enable the responding State to provide services, and failed to respond to requests to provide the information, the responding State was required to keep the case open, although it was unable to take any action on it. The final rule permits the responding State to close the case if it is unable to process the case due to lack of cooperation by the initiating State.

Paragraph (c) is revised to incorporate the renumbering of paragraph (b). In the first sentence, the reference to ''paragraphs (b)(1) through (7) and (11) and (12) of this section'' is changed to read ''paragraphs (b)(1) through (6) and (10) through (12) of this section[.]'' Paragraph (c) was also revised to clarify that the responding State, upon deciding to close a case pursuant to the authority of paragraph (b)(12) must send a notice of case closure to the initiating State. In addition, the references to ''custodial parent'' are revised to read ''recipient of services,'' for the reasons explained above. Also, in the second sentence, the reference to ''paragraph (b)(11)'' is changed to ''paragraph (b)(10),'' based upon the renumbering of paragraph (b).

In paragraph (d), we are making a technical amendment to the rule by removing the reference to ''subpart D,'' as that subpart has been reassigned and no longer addresses the issue of record retention.

Response to Comments

We received thirty-one comments from representatives of State and local IV–D agencies, national organizations, advocacy groups and private citizens on the proposed rule published February 24, 1998 in the **Federal Register** (63 FR 9172). A summary of the comments received and our responses follows:

General Comments

1. *Comment:* One commenter suggested the addition of a new criterion for case closure. This commenter suggested that the State IV–D agency be authorized to close a case when the obligor presented a risk of serious harm to State or local IV–D staff.

Response: The State is obligated under the Title IV–D program to provide child support enforcement services to eligible families. The protection of IV–D staff is the responsibility of the State, and States should develop procedures to deal with such situations. However, families needing child support enforcement services should not be punished for the possible threats or actions of obligors. Each State has laws designed to afford protection to the general public, including civil servants. In addition, IV–D offices can be designed in such a fashion to heighten the personal safety and security of staff. In light of these considerations, this recommendation was not adopted.

2. *Comment:* One commenter suggested that this regulation allow a State to close the non-IV–D case that remains in existence (e.g., payment registry responsibility) after a IV–D case is closed.

Response: We are unable to adopt this recommendation because it is inconsistent with Federal law. Specifically, section 454B(a)(1)(B) of the Social Security Act (the Act) requires that payment registry services be provided to non-IV–D orders meeting the eligibility criteria.

3. *Comment:* Two commenters objected to the incorporation of the term ''recipient of services'' into the case closure regulation. One commenter objected because he saw this term as subject to change within a case. Another commenter objected that this term was too broad and recommended that the term ''custodial parent'' be retained.

Response: These comments will not be incorporated because we believe that the term ''recipient of services'' best describes the individual at issue. Under section 454(4) of the Act, a IV–D case is established in response to two scenarios: (1) an individual applies for, and receives, certain forms of public assistance (TANF, IV–E foster care, medical assistance under Title XIX, and when cooperation with IV–D is required of a Food Stamp recipient) and good cause or another exception to cooperation with IV–D does not exist; or (2) when an individual not receiving the aforementioned types of public assistance makes an application for such services. IV–D services are available to both custodial and noncustodial parents. Finally, once a IV–D case is established, it is inappropriate to ''change'' the service recipient to another individual who neither received the appropriate form of public assistance nor applied for IV–D services.

4. *Comment:* One commenter recommended that OCSE consider a ''soft closure'' case type, for use in removing certain cases (low collection potential or where payments are legally being made directly to the family outside of the IV–D program) from the State's open case count.

Response: This comment will not be incorporated. The rule, as revised, provides the IV–D agencies with sufficient flexibility to manage cases with ''low collection potential.'' At § 303.11(b)(3)(iv), the final rule allows a case to be closed when paternity is in issue and the identity of the biological father cannot be identified after diligent efforts, which include at least one interview of the service recipient by the IV–D agency. In addition, § 303.11(b)(4) allows the IV–D agency to close cases in one year when the location of the noncustodial parent is unknown and the State has been unsuccessful, after regular attempts of multiple sources, to locate the parent, and insufficient information exists to allow the agency to conduct automated locate efforts. This paragraph also allows the IV–D agencies to close cases after three years where the noncustodial parent's location is unknown and the State has been unsuccessful, after regular attempts of multiple sources, to locate the parent when there is sufficient information to

allow the agency to conduct automated locate efforts.

With respect to the example in the comment of payments being made directly to the family, in IV–D cases, payments must be made through the State IV–D agency and then forwarded to the family. Therefore, we are unaware of any circumstances in which payments in a IV–D case flow directly from the obligor to obligee.

OCSE believes that attempts to further define cases with ''low collection potential'' in regulation is inappropriate. PRWORA has greatly expanded the pool of locate resources which, when all States are automated, will have a significant impact upon this universe of cases. Finally, the term ''low collection potential'' is extremely difficult to define in an objective fashion. As stated in the preamble to the proposed rule, although OCSE is revising this regulation to provide the States with additional flexibility to manage their IV–D caseloads, we are aware of the necessity to balance this flexibility against the program's mission to ensure that the public receives needed child support enforcement services. When these two factors came into direct conflict, we attempted to resolve the issue in favor of keeping a case open if there is a chance of success.

5.*Comment:* One commenter suggested that, in light of PRWORA, a reduction in the time required for automated searches was unreasonable.

Response: The reduction of the case closure time frame, from three years to one year, appears in § 303.11(b)(4)(ii). In order for a case to be eligible for closure under this authority there are three requirements. First, the location of the noncustodial parent must be unknown. Second, the State must have made diligent efforts in accordance with the Federal locate requirements in cection 303.3, using multiple sources, to locate the noncustodial parent. Finally, there must be insufficient information concerning this noncustodial parent to perform an automated locate search. OCSE reminds States that enhancements to the Enumeration Verification System (EVS) frequently allow unknown or incomplete social security numbers to be identified by the Social Security Administration when the State has an individual's full name and date of birth. OCSE Central Office coordinates the EVS program with the Social Security Administration. In addition, information provided by the custodial parent such as former addresses or employers could lead to identification of the noncustodial parent's social security number.

Although it is true that PRWORA provides expansive new locate resources to the IV–D community, the fact remains that you must have sufficient identifying information concerning the individual you are trying to locate in order to take advantage of these new locate tools. The reduction in this case closure time frame only applies to those cases where the IV–D agency is unable to make an automated locate effort.

6. *Comment:* One commenter raised the concern that the NPRM's proposed revisions to the case closure regulation would result in the closure of many cases that should not be closed.

Response: As stated in the preamble to the NPRM, one of the objectives of this revision to the case closure regulation was to provide the States with additional flexibility to manage their IV–D caseloads in an efficient manner. However, the NPRM also noted that any additional flexibility provided to the States was always balanced against the need to provide families with effective child support enforcement services. OCSE believes that this final rule is successful in striking a good balance between these two factors and, as a result, we expect that the public will receive improved services from the IV–D program.

Comments to Paragraph 303.11(b)(1)

1. *Comment:* One reviewer questioned whether a temporary order would apply to the requirement at paragraph (b)(1) that ''there is no longer a current support order?''

Response: Under the appropriate circumstances, a temporary order could apply to this requirement in paragraph (b)(1). State law governs the particular circumstances and duration for which a temporary child support order is enforceable. However, if the application of State law resulted in the termination of a temporary child support order during the minority of a child, it would be incumbent upon the State IV–D agency to attempt to establish a final order, provided the parent's legal liability to provide child support continued beyond the termination of the temporary order. If the next appropriate action in the case was the establishment of a final order, then the case could not be closed.

2. *Comment:* One commenter asked if paragraph (b)(1) could be used as authority for a IV–D agency to close a case that was opened after a child attained the age of majority, during which there was no need for a child support order, but subsequently (after emancipation) became disabled and under State law a support order was entered against this individual's parents?

Response: Under the IV–D program, the State is not required to open a case under these circumstances and this individual is not entitled to receive IV–D services because the obligation to provide support did not arise until after the child became emancipated. A State would not be entitled to receive FFP under the IV–D program for its efforts to establish and/or enforce such an order.

3. *Comment:* One commenter requested that paragraph (b)(1) be expanded to allow for the closure of a case which has a valid enforceable current support order, but where there has been no collection for a period of three years, to allow a State to close cases with low collection potential.

Response: This suggestion was not incorporated into the final rule because the reviewer is confusing ''unenforceable'' to mean ''low collection potential.'' The purpose of the case closure rule is to allow States to close unworkable cases thereby allowing each State to focus its resources on those cases which are workable. According to paragraph (b)(1), a case is ''unworkable'' if there is no current support order and the arrears are either under $500, or unenforceable under State law. Clearly, a case with a current child support order that does not qualify for closure under any other criteria in § 303.11(b), cannot be closed pursuant to paragraph (b)(1) simply because it has been deemed a low collection potential case.

Comments to Subparagraph 303.11(b)(3)(iv)

1. *Comment:* Two commenters requested clarification of the requirement in subparagraph (b)(3)(iv) that at least one interview of the recipient of services be conducted by IV–D staff. Specifically, these commenters asked if an entity working with the IV–D agency via a cooperative agreement would qualify as IV–D staff?

Response: If the IV–D agency enters into a cooperative agreement to implement this requirement in accordance with the authority at 45 CFR 302.12(a)(3), then the other entity would perform this interview as IV–D staff. As stated in the NPRM's Description of Regulatory Provisions, the purpose of this requirement was to clarify that the eligibility interview conducted by staff associated with the State's public assistance agency would not be sufficient for purposes of this subparagraph.

2. *Comment:* Nine commenters asked for clarification of the nature of the interview of the recipient of IV–D

services. Specifically, they asked if the interview was required to be conducted ''face-to-face,'' or could a separate IV–D interview be conducted over the telephone?

Response: OCSE recommends that, when logistically practicable, the interview of the recipient of services be conducted in-person. However, we recognize that in many States there are great distances between the public and the closest IV–D office and working parents may not be able to take time off for a face-to-face interview. Therefore, the IV–D interview of the recipient of services need not be a face-to-face interview, but may be conducted via the telephone, when appropriate.

3. *Comment:* Two commenters requested clarification of the application of subparagraph (b)(3)(iv) with respect to TANF recipients. These commenters were concerned that, in the event the identity of the biological father remained unknown following the IV–D interview of the recipient of services, the recipient of services would be determined to be not cooperating with the State IV–D agency for purposes of TANF eligibility.

Response: Under sections 408(a)(2) and 454(29)(A) of the Act, the State's IV–D agency is responsible for making the determination as to whether or not a TANF recipient is cooperating with the IV–D agency. Clearly, not every TANF recipient will be able to provide the IV–D agency with sufficient information about the biological father to allow the IV–D agency to proceed with an action to establish paternity. Because of this, not every individual who is unable to provide the IV–D agency with sufficient information should be determined to be not cooperating with the IV–D agency. Similarly, should the State close a IV–D case in accordance with paragraph (b)(3) or (4), for example, because the location of the individual being sought is unknown, IV–D case closure alone may not be used to determine noncooperation by a TANF recipient.

4. *Comment:* One commenter asked that the term ''identity'' be clarified in the final rule. The commenter was questioning whether this term meant more than a name.

Response: For purposes of subparagraph (b)(3)(iv), the term ''identity'' means the name of the biological father. That is, a case may be closed under the authority of this subparagraph only when, after diligent efforts (including at least one interview by the IV–D agency with the recipient of services), the name of the biological father remains unknown. If the IV–D agency knows the name of the biological father but cannot proceed because it does not have any additional information to locate this individual, then the case would be eligible for closure under the authority of subparagraph (b)(4)(ii).

5. *Comment:* Two commenters requested that the final rule clarify the use of the term ''diligent efforts'' in subparagraph (b)(3)(iv).

Response: In order for a paternity establishment case to be eligible for closure under subparagraph (b)(3)(iv), a State must make a meaningful attempt to identify the biological father. Under this subparagraph, this attempt to identify the biological father must include an interview of the recipient of services by IV–D staff. If, for example, the interview with the recipient of services failed to result in the identity of the biological father, but did result in a last known address or employer, a ''diligent effort'' to identify the biological father requires the IV–D agency to pursue these leads in an attempt to identify the biological father. States are required to comply with Federal locate requirements in 45 CFR 303.3 and to make a serious and meaningful attempt to identify the biological father (or any individual sought by the IV–D agency.)

Comments to Paragraph 303.11(b)(4)

1. *Comment:* One commenter requested a clarification of the term ''regular'' attempts to locate.

Response: Use of the term ''regular'' attempts in the proposed rule was intended to include attempts conducted in accordance with the program standards set forth in 45 CFR 303.3, which contains Federal location requirements. However, for clarity and consistency with terminology used in paragraph (b)(3)(iv), we have replaced ''regular attempts'' with ''diligent efforts'', and added a cross reference to locate regulations at 45 CFR 303.3.

2. *Comment:* Four commenters requested a clarification of the term ''sufficient information to initiate an automated locate effort.''

Response: As a general rule, the data elements needed to conduct an automated locate effort include an individual's name and social security number. It is possible that additional data elements will be required to undertake some automated locate efforts. For example, some entities identify individuals by name and date of birth. However, for purposes of this paragraph the data elements required for an automated locate effort are simply the individual's name and social security number. As stated above, in response to comment #5 (General Comments), the Enumeration Verification System will assist States in the identification of missing or incomplete social security numbers. Also, since States must meet Federal location requirements set forth in 45 CFR 303.3, diligent efforts to obtain the data elements critical for an automated search must occur and be unsuccessful before a State may consider closing the case using criteria in paragraph (b)(4).

3. *Comment:* One commenter asks if paragraph (b)(4)'s use of the term ''noncustodial parent's location is unknown'' means the physical address and the location of any assets attributable to the noncustodial parent?

Response: For purposes of paragraph (b)(4), the term ''noncustodial parent's location'' means the resident or employment address of the noncustodial parent. Under this paragraph, a case would not be available for closure if the resident address of the noncustodial parent was known but the IV–D agency was unable to locate any assets attributable to the noncustodial parent.

4. *Comment:* One commenter objected to paragraph (b)(4) on the basis that it assumes a level of State automation which does not currently exist.

Response: Automated location attempts do not require statewide automated systems. While it is true that, as of the date of this final rule, not all States have certified statewide automated systems in place, States do have automated locate systems capability and the majority of States have Statewide systems mandated by section 454(16) of the Social Security Act. In addition, this final rule is intended to provide program guidance well into the future. Because OCSE expects that all States will implement certified statewide automated systems as required by law, we are confident that this rule's reliance upon enhanced automated locate resources will prove beneficial to both the IV–D program and the families we serve.

5. *Comment:* One commenter suggested adding to the case closure criteria set forth in paragraph (b)(4) that the IV–D agency interview the recipient of services.

Response: In this final rule OCSE makes a distinction between ''identifying'' and ''locating'' the noncustodial parent. When the IV–D agency is unable to identify the noncustodial parent, the only resource available to assist the IV–D agency is the recipient of services. However, if the identity of the noncustodial parent is known, but his/her location is unknown, then there are multiple locate resources available to the IV–D agency.

Certainly one of these resources is the recipient of services. In fact, 45 CFR 303.2(b)(1) requires the IV–D agency to ''solicit necessary and relevant information from the custodial parent.''

6. *Comment:* Two commenters questioned the wisdom of the one-year waiting period before a case can be closed under the authority of subparagraph (b)(4)(ii) when the noncustodial parent's location is unknown and the IV–D agency does not have sufficient information to initiate an automated locate effort. Conversely, another commenter objected to reducing the existing three-year period to one year.

Response: As discussed in the preamble to the NPRM, the establishment of the new case closure criterion that appears at subparagraph (b)(4)(ii), which allows a case to be closed after one year when the location of the noncustodial parent is unknown and insufficient information exists to conduct an automate locate effort, was made at the request of the IV–D Directors' Association. We believe a one-year waiting period achieves a reasonable balance between the desire to assure that workable cases remain open and the desire to close those cases which show no promise of being workable. During that time period, a State IV–D agency must meet location requirements within specified timeframes as set forth in section 303.3. As stated in the preamble to the NPRM, we continue to believe that PRWORA's cooperation requirements will provide adequate safeguards against the premature closing of cases where a reasonable potential for establishment or enforcement exists. Should the recipient of services provide additional information that allows the State IV–D agency to locate the noncustodial parent, the case will remain open.

Comments to Paragraph 303.11(b)(9)

1. *Comment:* One commenter requested the final rule include a definition of the term ''good cause.''

Response: Section 454(29) of the Act provides the States the option to have good cause determined by either the State IV–D agency, or the agencies administering the State's TANF, IV–E or Title XIX funded program. For the food stamp program, the State agency responsible for administering that program is also responsible for determining good cause. Congress made it clear that determinations of good cause were to be ''defined, taking into account the best interests of the child, and applied'' by the State agency. Because of this directive OCSE is unable to adopt the suggestion of this commenter.

2. *Comment:* One commenter recommended that the reference to 45 CFR 232.40 be removed from paragraph (b)(9) because this Federal regulation was obsolete.

Response: OCSE concurs with this suggestion and the reference to 45 CFR 232.40 is removed from the final rule.

3. *Comment:* Two commenters observed that section 454(29) of the Act exempts a public assistance recipient from the requirement to cooperate with the IV–D program for good cause ''and other exceptions.'' Both commenters recommended that a reference to ''other exceptions'' be included in paragraph (b)(9) when the final rule was issued.

Response: OCSE concurs with this recommendation and the final rule revises paragraph (b)(9) to expand good cause to include ''other exceptions.''

Comments to Paragraph 303.11(b)(10)

1. *Comment:* One commenter asked if a State could retain a requirement that one attempt to contact the service recipient be by certified mail?

Response: A State is free to continue the requirement that at least one attempt to contact the service recipient be conducted by certified mail. The Federal regulations set forth the minimum program standards with which the States must comply. As previously stated in the preamble to the final case closure rule issued on August 4, 1989, (54 FR 32284) and in OCSE–AT–89–15, there is nothing to prohibit a State from establishing criteria which make it harder to close a case than those established in paragraph (b).

2. *Comment:* Five commenters asked if the 60 calendar day period (related to time frame in which the IV–D agency is unable to contact the recipient of services) referenced in paragraph (b)(10) could be viewed as satisfying the 60 calendar day period (related to the notice of case closure time frame during which the recipient of services may respond to the notice) referenced in paragraph (c). Conversely, one commenter expressed a concern that the States would compress these two 60 calendar day time frames into a single 60 calendar day period.

Response: The 60 calendar day time periods that appear in paragraph (b)(10) and paragraph (c) are independent time frames. It is not appropriate for a State to close a case upon the occurrence of the criterion set forth in paragraph (b)(10) without fully complying with the requirements of paragraph (c). In other words, when the IV–D agency is unable to contact the non-IV–A recipient of services during a 60 calendar day period, the IV–D agency may not automatically close that case without first complying with the requirement in paragraph (c) by providing the recipient of services 60 calendar days to respond to a written notice of the State's intent to close the case.

3. *Comment:* One commenter objected to the criterion of (b)(10) on the basis that this would allow the States to close many ''workable'' cases.

Response: By definition, the criterion for closing a case set forth in paragraph (b)(10) applies only to non-IV–A cases. In non-IV–A cases the IV–D program is required to distribute child support collections to the recipient of services. If the recipient of services fails to keep the IV–D program apprised of his/her mailing address, child support cannot be distributed. In these instances the case is no longer ''workable'' under the requirements of IV–D, and, therefore, it is appropriate for the IV–D agency to close the case. If, following the closure of the case, the former recipient of services wishes to reapply for IV–D services, he/she may do so.

4. *Comment:* One commenter requested an explanation as to what triggered the start of the 60 calendar day time period referenced in paragraph (b)(10).

Response: The 60 calendar day time period appearing in paragraph (b)(10) commences with the date the letter is mailed to the recipient of services.

5. *Comment:* One commenter asked that if the letter sent to the recipient of services in accordance with paragraph (b)(10) is returned to the IV–D agency with a notation by the Postal Service that the addressee has moved and left no forwarding address, is it still necessary to wait 60 calendar days before commencing the case closure process detailed in paragraph (c)?

Response: Yes, it is appropriate to provide the 60 calendar day time frame in instances where the letter sent to the recipient of services is returned marked ''moved, left no forwarding address.'' The reason for this is to allow the recipient of services, who may have just moved, sufficient time to contact the IV–D agency to provide his/her new address. In addition, if the paragraph (b)(10), 60 calendar day time frame was waived in these instances, and the IV–D agency immediately issued the written closure notice required in paragraph (c), this notice would undoubtedly be sent to the very same address reported by the Postal Service to be obsolete. OCSE recognizes that in some cases the recipient of services will fail to contact the IV–D agency during the paragraph (b)(10), 60 day time period and the agency will be required

to issue a notice to an address they know to be obsolete. However, OCSE believes that a good number of these service recipients will contact the IV–D program and provide their new addresses. By waiting an additional 60 calendar days, a State will be able to save itself the time and trouble of closing and then reopening a great number of cases.

6. *Comment:* One commenter objected to the replacement of the former ''certified'' mailing requirement with the current ''regular'' mailing requirement.

Response: As stated in the preamble to the NPRM, the allowance of the first class letter is in accord with the new requirements in welfare reform. In addition, it must be kept in mind that the individuals the IV–D agency is attempting to contact with this mailing are recipients of services who are not receiving public assistance. These are the individuals to whom the IV–D agency is required to send the child support collection. If non-IV–A recipients of services fail to keep the IV–D agency apprised of their current addresses, they effectively deny that agency the ability to provide child support enforcement services to them.

7. *Comment:* One commenter objected to the minimum requirement of ''one'' attempt to contact the non-IV–A recipient of services by regular mail on the basis of the commenter's belief that the Postal Service provides poor mail service to low income communities.

Response: OCSE is not aware of any authority for the statement that the Postal Service provides poor mail service to low income communities. As previously stated in the preamble to the NPRM for this rule, the trend is moving toward a reduction in the mailing standard. Both PRWORA and the Uniform Interstate Family Support Act (UIFSA) frequently allow notices to be sent by regular mail. For these reasons, OCSE has determined that a regular first class mailing is appropriate for the purposes of paragraph (b)(10).

Comments to Paragraph 303.11(b)(12)

1. *Comment:* Two commenters objected to what they perceived to be a subjective standard in paragraph (b)(12) under which the responding State is authorized to close an interstate case when it documents a failure on the part of the initiating State to take an action which is essential for the next step in providing services.

Response: This standard of review, as to when an action is ''essential'' for taking the next step in a IV–AD case, is not new. In fact, this standard has been in existence since 1989, when the Federal case closure regulation was originally promulgated and remains the basis for case closure under former paragraph (b)(12)/new paragraph (b)(11). The States have been successful in implementing this standard of review and OCSE has no reason to believe that this standard, when applied to an initiating State as opposed to a custodial parent, will become problematic.

One example which would not meet the condition for case closure under section 303.11(b)(12) involves direct withholding under the Uniform Interstate Family Support Act. Under UIFSA, States may send a withholding notice directly to an employer in another State. Traditionally, interstate case processing goes from a IV–AD agency in one State to a IV–AD agency in another State, which then forwards a withholding order to an employer in its State. However, if a State, using authority under its UIFSA statute, sends a withholding notice directly to an employer in another State, it cannot be considered noncooperation and a rationale for case closure under section 303.11(b)(12) by the employer's State which is otherwise processing an interstate case for the State that sends the direct withholding.

2. *Comment:* Two commenters requested a revision to paragraph (b)(12) to provide for specific criteria which would support the case closure decision made by a responding State. Three other commenters offered related recommendations that the final rule clarify that the interstate program standards in 45 CFR 303.7 apply to the application of paragraph (b)(12).

Response: Because this paragraph only applies to interstate cases, the program standards appearing at § 303.7 apply and will drive the decision as to whether or not an initiating State has failed to take an action that is essential to the next step in providing services. The requirements and time frames of § 303.7 are to be used by the responding State in making this determination.

3. *Comment:* One commenter requested that the final rule require the responding State, upon deciding to close a case pursuant to the authority of paragraph (b)(12), to send a notice of case closure to the initiating State.

Response: Yes, OCSE concurs with this recommendation and the final rule revises paragraph (c) to require the responding State, upon deciding to close a case pursuant to the authority of paragraph (b)(12), to send a notice of case closure to the initiating State.

4. *Comment:* One commenter suggested that the final rule incorporate a 60 calendar day time frame to the paragraph (b)(12) interstate case closure criterion.

Response: Yes, this recommendation was adopted by including paragraph (b)(12) closures in the sections referenced by paragraph (c), which incorporates a 60 calendar day case closure time frame.

5. *Comment:* One commenter requested that the final rule clarify that paragraph (b)(12) applied in both assistance and nonassistance cases.

Response: Paragraph (b)(12) applies to all interstate IV–D cases, assistance and nonassistance alike.

6. *Comment:* One commenter recommended that the final rule require the responding State to send a notice of case closure directly to the custodial parent in the initiating State.

Response: This suggestion is inconsistent with OCSE's long-standing interstate policy that the responding State not have direct contact with the custodial parent residing in, and receiving IV–D services from, the initiating State. In OCSE–AT–88–02, in response to a similar suggestion, OCSE announced that ''it is not the responding State's responsibility to be in direct contact with the custodial parent and it would be overly burdensome to require them to do so.'' Another reason why it would be imprudent to adopt this recommendation is that the interstate request for services may be based solely upon an arrearage owed to the initiating State, and the whereabouts of the custodial parent may be unknown to both States.

Comments to Paragraph 303.11(c)

1. *Comment:* One commenter requested that the 60 calendar day notice of case closure time frame appearing in paragraph (c) be reduced to a period of 30 calendar days.

Response: The 60 calendar day time frame the commenter is addressing has been required under Federal case closure regulations since the original final rule was promulgated on August 4, 1989. The 60 calendar day time frame has worked well for the past ten years and, at this time, OCSE does not believe that it would be appropriate to reduce it to 30 days.

2. *Comment:* One commenter requested that the final rule expressly provide that the paragraph (c) notice of case closure may be sent by first class mail.

Response: OCSE believes that, by remaining silent on the manner in which the notice of case closure is to be sent, the States are provided the maximum amount of flexibility. As noted above, one State responded to the NPRM with the request that they be

allowed to continue to use certified mailings for their case closure notices. As currently drafted, the paragraph (c) notice of case closure may be sent by either first class or certified mail. For these reasons OCSE decided not to adopt this recommendation.

3. *Comment:* Two commenters responded to the NPRM by asking that paragraph (c) exempt a number of factual situations from the requirement that a notice of case closure be sent. The following examples of such fact patterns were received: when the obligor, obligee or child has died; when the obligor's duty to support the child has been terminated by a court; when the obligor and obligee reconcile; and when the child leaves a IV–E funded foster care placement.

Response: OCSE has decided not to adopt this suggestion. In fact, in some of these situations, it may not be appropriate to close the case, let alone send the notice of case closure. For example, the obligor's duty to provide child support survives the death of the obligee. If arrears are owed in the case, the obligor's duty to repay these arrears will survive the death of a child. The existing regulations have included the requirement to send this notice in situations where the case is closed under former paragraph (b)(3)/new paragraph (b)(2) which is based upon the death of the obligor because the recipient of services may have knowledge of available assets in the decedent's estate. OCSE is addressing the continuation of services issue in IV–E cases in another rulemaking activity. In addition to what has already been stated in this response, OCSE believes that it is important for the IV–D agency to notify the recipient of services of its intention to close a case based upon the criteria identified in paragraph (c).

4. *Comment:* One commenter recommended that paragraphs (b) (1), (2) and (3) be removed from the requirement to send the notice of case closure in paragraph (c) because those criteria did not pertain to the recipient of services' cooperation.

Response: The reasoning behind the paragraph (c) requirement that the recipient of services receive notice of the case closure is based upon the duty of the IV–D agency to keep the recipient of services informed of the actions undertaken on his/her child support case. The notice of case closure is not to be limited solely to instances where the case is being closed due to the noncooperation of the recipient of services. For these reasons, OCSE has decided not to adopt this recommendation.

5. *Comment:* Two commenters requested that the final rule clarify that, should a former recipient of services contact the IV–D agency to request child support enforcement services subsequent to the closure of his/her case, then this former recipient of services would be required to complete a new application and pay any applicable application fee. Another commenter offered a related suggestion. This commenter requested that paragraph (c) be revised to indicate that the ''recipient of services'' is, in fact, the ''former'' recipient of services when this term is referencing an individual whose case has been closed.

Response: OCSE concurs with both of these suggestions. After a IV–D agency has closed a case pursuant to the procedures outlined in 45 CFR 303.11, the former recipient of services may reapply for services at any time, provided this individual is otherwise eligible to receive IV–D services. Should a former recipient of services request IV–D services be resumed, this individual would be required to complete a new application for IV–D services and pay any applicable application fee.

6. *Comment:* One commenter noted the change in terminology from ''custodial parent'' to ''recipient of services'' and asked if this meant the States needed to change this term on all of their local forms.

Response: It is not necessary for a State to change the terminology within its local forms to comply with such changes OCSE is making in this final rule. However, OCSE encourages the States to keep this issue in mind when they are otherwise revising their local forms. If the term ''recipient of services'' more accurately reflects the individual at issue, then the States should consider making a change in this terminology at that time.

Regulatory Impact Analyses

Paperwork Reduction Act

This rule does not contain information collection provisions subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

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 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 Act.

Executive Order 12866

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. No costs are associated with this final rule.

Unfunded Mandates Act

The Department has determined that this final rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995.

Congressional Review of Rulemaking

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

List of Subjects in 45 CFR Part 303

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

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

Dated: October 21, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: November 30, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR Part 303 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), 1396(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 303.11 [Amended]

2. Section 303.11 is amended as follows:

a. Paragraph (b)(1) is revised and paragraph (b)(2) is removed to read as follows:

* * * * *

(b) * * *

(1) There is no longer a current support order and arrearages are under $500 or unenforceable under State law;

* * * * *

b. Paragraph (b)(3) is redesignated as paragraph (b)(2).

c. Paragraph (b)(4) is redesignated as paragraph (b)(3) and amended by adding paragraph (b)(3)(iv) to read as follows:

* * * * *

(b) * * *

(3) * * *

(iv) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the IV–D agency with the recipient of services;

* * * * *

d. Paragraph (b)(5) is redesignated as paragraph (b)(4) and revised to read as follows:

* * * * *

(b) * * *

(4) The noncustodial parent's location is unknown, and the State has made diligent efforts using multiple sources, in accordance with § 303.3, all of which have been unsuccessful, to locate the noncustodial parent:

(i) Over a three-year period when there is sufficient information to initiate an automated locate effort, or

(ii) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

* * * * *

e. Paragraphs (b)(6) through (b)(12) are redesignated as paragraphs (b)(5) through (b)(11), respectively.

f. Newly redesignated paragraph (b)(9) is revised to read as follows:

* * * * *

(b) * * *

(9) There has been a finding by the responsible State agency of good cause or other exceptions to cooperation with the IV–D agency and the State or local IV–A, IV–D, IV–E, Medicaid or food stamp agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative;

* * * * *

g. Newly redesignated paragraph (b)(10) is revised to read as follows:

* * * * *

(b) * * *

(10) In a non-IV–A case receiving services under § 302.33(a)(1) (i) or (iii), the IV–D agency is unable to contact the recipient of services within a 60 calendar day period despite an attempt of at least one letter sent by first class mail to the last known address;

* * * * *

h. Paragraph (b)(12) is added to read as follows:

* * * * *

(b) * * *

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

* * * * *

i. Paragraph (c) is revised to read as follows:

* * * * *

(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 interstate case meeting the criteria for closure under (b)(12), 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 recipient of services or 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, 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.

* * * * *

j. Paragraph (d) is revised to read as follows:

* * * * *

(d) The IV–D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR part 74.

* * * * *

k. In addition to the amendments set forth above, remove the words ''absent parent('s)'', and add, in their place, the words ''noncustodial parent('s)'' in the following places:

(1) Newly redesignated paragraph (b)(2);

(2) Newly redesignated paragraph (b)(4);

(3) Newly redesignated paragraph (b)(5); and

(4) Newly redesignated paragraph (b)(6).

l. In addition to the amendments set forth above, remove the words ''custodial parent('s)'', and add, in their place, the words ''recipient('s) of services'' in the following places:

(1) Newly redesignated paragraph (b)(8);

(2) Newly redesignated paragraph (b)(10); and

(3) Newly redesignated paragraph (b)(11).

[FR Doc. 99–5831 Filed 3–9–99; 8:45 am]

BILLING CODE 4184–01–P