or documents. If the former employee files a supplement to the petition, the Chief Postal Inspector may file any supplemental answer and records to support the position of the Postal Service within twenty (20) calendar days from the date of receipt of the supplement filed with the Recorder.

§ 966.8 Hearing Official authority and responsibilities.

In conducting a hearing under this part, the Hearing Official's authority includes, but is not limited to, the following:

(a) Ruling on all offers, motions, or requests by the parties;

(b) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;

(c) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties);

(d) Determining if an oral hearing is necessary and setting the place, date, and time for such hearing;

(e) Administering oaths or affirmations to witnesses;

(f) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, and that irrelevant, immaterial or repetitious evidence is excluded;

(g) Establishing the record in the case;

(h) Issuing an initial decision or one on remand; and

(i) Granting, at the request of either party, reasonable time extensions.

§ 966.9 Opportunity for oral hearing.

An oral hearing generally will be held only in those cases which, in the opinion of the Hearing Official, cannot be resolved by a review of the documentary evidence, such as when the existence, or amount, of a debt turns on issues of credibility or veracity. When the Hearing Official determines that an oral hearing is not necessary, the decision shall be based solely on written submissions.

§ 966.10 Initial decision.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of any post-hearing briefs, the Hearing Official shall issue a written initial decision, including findings of fact and conclusions of law, which the Hearing Official relied upon in determining whether the former employee is indebted to the Postal Service, or in upholding or revising the administrative offset schedule proposed by the Postal Service for collecting a former employee's debt. When the Judicial Officer presides at a hearing he or she shall issue a final or a tentative decision. The initial or tentative decision shall become the final agency decision unless appeal is taken pursuant to § 966.11.

(b) The Hearing Official shall promptly send to each party a copy of the initial or tentative decision, and a statement describing the right of appeal to the Judicial Officer in accordance with § 966.11.

(c) Unless the former employee or Chief Postal Inspector appeals the Hearing Official's initial or tentative decision within thirty (30) days from receipt of the decision, such decision shall become the final agency decision, and an order to that effect will be issued by the Judicial Officer.

§ 966.11 Appeal of initial or tentative decision to Judicial Officer.

(a) *Notice of appeal and supporting brief.* (1) A former employee or the Chief Postal Inspector may appeal an adverse decision by a Hearing Official by filing a Notice of Appeal with the Recorder within thirty (30) days after receipt of the decision. The Judicial Officer may extend the filing period upon written application of either party for good cause shown.

(2) The Notice of Appeal must be accompanied by a written brief specifying exceptions to findings of fact and conclusions of law, and any reasons for such exceptions, to the Hearing Official's decision.

(3) No later than thirty (30) days after receiving the Notice of Appeal and accompanying brief, the opposing party may file a response with the Recorder.

(b) *Form of review.* (1) Review by the Judicial Officer will be based on the entire record and written submissions.

(2) Objections or new issues not raised in the hearing will not be considered unless the interested party demonstrates that the failure to raise the objection or issue before the Hearing Official was caused by extraordinary circumstances.

(3) The Judicial Officer shall have all powers of a Hearing Official and on appeal may order the hearing reopened for the presentation of additional evidence or, in his or her discretion, remand the case to the Hearing Official for further action.

(c) *Decision of Judicial Officer.* The Judicial Officer shall affirm, reverse, or modify any decision appealed under this section and shall promptly serve each party to the appeal with a copy of this or her decision and a statement that such decision constitutes the final agency decision.

§ 966.12 Waiver of rights.

The Hearing Official may determine the former employee has waived his or her right to a hearing and administrative offset may be initiated if the former employee:

(a) Files a petition for hearing after the end of the prescribed thirty (30) day period, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the former employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official; or

(d) Files a withdrawal of his or her petition for a hearing with the Recorder.

§ 966.13 Ex parte communications.

Ex parte communications between a Hearing Official or his or her staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any such procedural communication will be transmitted to both parties.

James A. Cohen,

Judicial Officer.

[FR Doc. 89-9300 Filed 4-18-89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300196; FRL-3557-2]

Pesticide Tolerance for Clofentezine; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 89-6708, appearing at page 11704 in the **Federal Register** of March 22, 1989 (54 FR 11704; March 22, 1989), EPA added 40 CFR 180.446 establishing a tolerance of 0.5 part per million for the insecticide clofentezine in or on pears. The information in the "Date" heading inadvertently failed to include the effective date, which is hereby corrected to add the following sentence: "This regulation becomes effective on March 22, 1989."

FOR FURTHER INFORMATION CONTACT: Dennis Edwards, Jr., Product Manager (PM) 12, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 557-2386.

Dated: April 7, 1989.

Herbert Harrison,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-9211 Filed 4-18-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-20

[FPMR Amdt. D-89]

Management of Buildings and Grounds

ACTION: Final rule.

AGENCY: General Services Administration.

SUMMARY: Currently the GSA Rules and Regulations Governing Public Buildings and Grounds prohibit the possession of firearms and dangerous weapons (41 CFR 101-20.313) with penalty provisions stipulated in 41 CFR 101-20.35. However, the enactment of section 930 of Title 18, U.S. Code supersedes the penalty provisions stated in 41 CFR 101-20.315. Accordingly, FPMR Subchapter D is being amended.

EFFECTIVE DATE: April 19, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Hankinson (202-566-0887).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

PART 101-20—[AMENDED]

1. The authority citation for Part 101-20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 101-20.313 is retitled and revised to read as follows:

§ 101-20.313 Explosives.

No person entering or while on property shall carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes. (Weapons, see Title 18, U.S. Code 930.)

Dated: March 21, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-9322 Filed 4-18-89; 8:45 am]

BILLING CODE 6820-23-M

41 CFR Part 101-39

[FPMR Amdt. G-89]

Transportation and Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation provides additional criteria for approval of vehicle modifications or the addition of accessory equipment to GSA Interagency Fleet Management System vehicles. The GSA policy concerning the installation of accessory equipment in GSA vehicles has sometimes been interpreted inconsistently in that agencies or agency personnel have installed equipment that is either illegal or reflects an inappropriate impression of the Government worker to the public.

EFFECTIVE DATE: April 19, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Moses, Fleet Management Division (703-557-1273).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-39

Interagency fleet management system.

PART 101-39—INTERAGENCY FLEET MANAGEMENT SYSTEMS

1. The authority citation for Part 101-39 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-39.3—Use and Care of Interagency Fleet Management System Vehicles

2. Section 101-39.304 is revised to read as follows:

§ 101-39.304 Modification or installation of accessory equipment.

The modification of a GSA Interagency Fleet Management System (IFMS) vehicle or the permanent installation of accessory equipment on these vehicles may be accomplished only when approved by GSA. For the purpose of this regulation, permanent installation means the actual bolting, fitting, or securing of an item to the vehicle. Such modification or installation of accessory equipment must be considered by the using agency as essential for the accomplishment of the agency's mission. The request for such modification or installation shall be forwarded to the appropriate GSA Regional Fleet Manager for consideration. Accessory equipment or other after-market items which project an inappropriate appearance, such as radar detectors, will not be used on IFMS vehicles. Decorative items (i.e., bumper stickers and decals) will not be used on IFMS vehicles unless authorized by the Director, Fleet Management Division, GSA.

Dated: March 23, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-9323 Filed 4-18-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 305

RIN 0970-AA03

Child Support Enforcement Program; Implementation of Section 9103 of Public Law 99-509: Prohibition of Retroactive Modification of Child Support Arrearages

AGENCY: Office of Child Support Enforcement, HHS.

ACTION: Final rule.

SUMMARY: These final rules implement section 9103 of Pub. L. 99-509, the

Omnibus Budget Reconciliation Act of 1986, which amended section 466(a) of the Social Security Act (the Act), effective October 21, 1986. Section 9103 requires that, as a condition of State IV–D plan approval, States have in effect laws requiring the use of procedures to prohibit retroactive modification of child support arrearages. However, such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice has been given, either directly or through the appropriate agent, to the obligee or (where the petitioner is the obligee) to the obligor. Specifically, State IV–D agencies must have in effect and use procedures whereby any payment or installment of support under any child support order is, on and after the date it is due, a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State and is entitled, as such, to full faith and credit in such State and in any other State.

A clear implication of child support becoming a final judgment when due is that when there is more than one child support order for the same child, absent parents owe the amount of the order providing the greatest support. If, for example, a Uniform Reciprocal Enforcement of Support Act (URESA) order requires $150 child support while a divorce order requires $200, the full $200 becomes a final judgment. If the State of residence of the absent parent enforces $150 for current support, the absent parent still owes the additional $50 as an accumulated arrearage. It would generally be more efficient for the absent parent's State to enforce the original order, without the need to obtain a new or revised order. Interstate wage withholding offers this efficiency when the absent parent is a wage-earner. The Social Security Act requires that wage withholding systems include cases where the applicable support orders were issued in other States. It would be desirable to have similarly efficient processes for cases with other types of income and assets. The requirement that the Secretary promulgate rules necessary for efficient administration, so long as they are not inconsistent with other parts of the relevant statutes, authorizes the Secretary to require changes that would simplify and expedite interstate cases. The Department hopes that the Interstate Child Support Commission established by the Family Support Act of 1988 (Pub. L. 100–485) will suggest ways to move towards a more efficient process while still preserving due process rights.

While the effective date of this statute was October 21, 1986, under section 9103(b)(2) of Pub. L. 99–509, if a State demonstrates to the Secretary, HHS, that State legislation is required to conform the State IV–D plan to the requirements of this statute, a delay based on the need for legislation may be granted. In such a case, the State's plan would not be regarded as failing to comply solely by reason of its failure to meet the requirements imposed by the new amendments until the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 21, 1986.

EFFECTIVE DATE: April 19, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Fitzgerald, Policy Branch, OCSE (202) 252–5366.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collections of information requirements at 45 CFR 302.70(a)(9), 303.106(a), 303.106(b) and 305.57 is estimated to average 10, 1,000, .5 and 1,000 minutes per response respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Child Support Enforcement, Family Support Administration, 370 L'Enfant Promenade SW., Washington, DC. 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503.

Background

Section 9103 of Pub. L. 99–509 is a result of Congress' recognition of the disparity among States regarding the treatment of child support orders, and in particular, a concern about State laws and practices permitting modification of child support arrearages. Although most States permit child support orders to be modified only prospectively, thus affecting only future child support payments, some States have accorded child support orders a lesser stature than other money judgments, and have allowed child support awards to be modified retroactively. In such States, the court or administrative entity has had the authority to r+duce or nullify arrearages by reducing the amounts owed for past periods.

Prior to enactment of section 9103 of Pub. L. 99–509, 18 States permitted child support orders to be modified retroactively. The vast majority of such retroactive modifications when they occurred had the effect of reducing the amount of child support ordered. Thus, for example, an order for $200 a month for child support, which was unpaid for 36 months, should accumulate an arrearage of $7,200. Yet, if the obligor was brought to court, having made no prior attempt to modify the order, the order might be reduced to $100 a month retroactive to 36 months prior to the date of modification. This has the effect of reducing the arrearage from $7,200 to $3,600. The order could be reduced without placing any diligence requirement on the absent parent to petition in a timely manner to reduce the order, if for some reason his or her ability to comply with the order had changed. Such laws further permitted arguments to be made about changed circumstances in prior periods at a time when evidence may not have been easily attained or available. Rebuttal, by the obligee, thus, was extremely difficult.

In interstate cases involving registration of out-of-State child support orders, where the absent parent resided in a State different from the one where his or her children resided or where the child support order was entered, the problem of retroactive modification was exacerbated. In such cases, the custodial parent usually could not be present when the case was heard in the absent parent's State and was thus unable to testify about any claimed past change in circumstances.

In addition to the 18 States which prior to enactment of Pub. L. 99–509 permitted retroactive modification of child support orders, 17 other States did not require reducing child support debts to final judgment as the payments became due. As a result, the child support debts were not entitled to full faith and credit in other States as is the case with other money judgments.

In light of this situation, section 9103 added a new requirement to section 466(a) of the Act which States must meet in order to have an approved title IV–D State Plan. Specifically, under section 466(a)(9), States must have in effect laws requiring the use of procedures under which any payment or installment on a child support order is a judgment, on and after the date each payment is due, and retroactive modification of child support orders is prohibited with the following exception. Modification

may be permitted with respect to any period during which there is pending a petition for modification, but only from the date notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

In the past, when an absent parent moved out of the State where a support obligation had been established, the IV–D agency representing the custodial parent often would be required to use the Uniform Reciprocal Enforcement of Support Act (URESA) in order to obtain an enforceable order in the absent parent's new State of residence. Using URESA is time consuming and frustrating for the custodial parent owed a support obligation. Under URESA, the absent parent generally has the opportunity to allege inability to pay the previously established support amount, which may result in a lower support order being entered. Under the requirement specified by section 9103, all child support orders in a State, including orders entered before October 21, 1986, can now be enforced by any other State (e.g., by registration under the Uniform Enforcement of Foreign Judgments Act) without creating a new child support order. Such a provision will ensure that the processing of interstate cases will be less time consuming and less costly when the custodial parent already has a child support order, and child support collections will increase because accumulated arrearage debts will stay intact and not be reduced or forgiven. Specific remedies to enforce these judgments will be determined by the State where the judgment was entered or is registered, pursuant to State law.

Section 9103 of Pub. L. 99–509 adds a ninth mandatory procedure to section 466(a) of the Act which requires States to have in effect laws requiring the use of certain procedures to increase the effectiveness of their child support enforcement programs in order to have an approved title IV–D State plan. The previously existing mandatory procedures are:

(1) Wage withholding;

(2) Expedited processes to establish and enforce child support obligations;

(3) State income tax refund offset;

(4) Imposition of liens against real and personal property;

(5) Establishment of paternity at least until the child's 18th birthday;

(6) Requiring an absent parent to give security or post a bond or some other guarantee to secure payment of support;

(7) Making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies; and

(8) Provision for wage withholding in all child support orders which are issued or modified in the State.

The new mandatory procedure added by section 9103 requires that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the State's expedited processes, is (on and after the date it is due):

(A) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(B) entitled as a judgment to full faith and credit in such State and in any other State; and

(C) not subject to retroactive modification by such State or by any other State.

However, such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice has been given, either directly or through the appropriate agent, to the obligee (or where the obligee is the petitioner) to the obligor.

While the effective date of this statute is October 21, 1986, under section 9103(b)(2) of Pub. L. 99–509, if a State demonstrates to the Secretary, HHS, that State legislation is required to conform the State IV–D plan to the requirements of the statute, a delay in implementation based on the need for legislation may be granted. In such a case, the State's IV–D plan would not be regarded as failing to comply with the requirements imposed by the amendment until the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 21, 1986.

Statutory Authority

This final rule is published under the authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act. Section 454(20) of the Act requires State plans to provide that States have in effect laws requiring the use of the procedures prescribed in section 466 of the Act to increase the effectiveness of their Child Support Enforcement programs, and have implemented procedures regarding such laws. Section 9103 of Pub. L. 99–509 added a new paragraph (9) under section 466(a) which requires that States have in effect laws requiring the use of procedures which provide that any payment or installment of support under any child support order is a judgment, entitled to full faith and credit, and not subject to retroactive modification.

Regulatory Provisions

This regulation revises § 302.70(a) to specify that the effective date for paragraphs (1) through (8) is October 1, 1985 and for paragraph (9) is October 21, 1986.

In addition, this regulation adds a new paragraph (9) under § 302.70(a) to require that any payment or installment of support under any child support order is, on and after the date it is due, a judgment, and may not be modified retroactively.

This regulation also amends 45 CFR Part 303 to add a new § 303.106 entitled Procedures to prohibit retroactive modification of child support arrearages. Paragraph (a) of this section requires States to have in effect and use procedures which provide that any payment of child support, on and after the date it is due, is a judgment, by operation of law. This requirement provides that the child support installment must become a judgment without the need for any action by an entity; it becomes a judgment simply by a payment falling due. Paragraph (a)(2) of § 303.106 requires that the judgment be entitled to full faith and credit in the originating State and in any other State. Full faith and credit is a Constitutional principle which provides that the various States must recognize the judgments of the other States within the United States and accord them the force and effect they would have in their home State.

Paragraph (a)(3) states that the judgment is not subject to retroactive modification, except as provided under paragraph (b) of this section. The intent of this requirement is to prohibit courts or administrative entities from forgiving or reducing arrearages.

Paragraph (b) provides for the exception referred to in paragraph (a)(3) that permits limited retroactive modification of child support orders. The first condition is that modification may be permitted by the State for any period during which there is pending a petition for modification. The second condition requires that the modification may only be permitted from the date that notice of such petition has been given, either directly or through the appropriate agent to the obligee or (where the obligee is the petitioner) to the obligor.

These regulations also amend the audit regulations by adding a new § 305.57 entitled Retroactive

modification of child support arrearages. This audit criterion provides that, in order to meet the requirements of title IV–D, the State must have laws in effect and be using procedures which require that any payment or installment of support under any child support order is, on and after the date it is due, a judgment, and may not be modified retroactively, except as provided in 45 CFR 303.106 of this chapter.

Public Comment

A notice of proposed rulemaking was published in the **Federal Register** (52 FR 34689) on September 14, 1987. The comment period ended on November 13, 1987. We received 12 written comments from State and local agencies, 8 from organizations and 2 from private citizens. Although no changes were made to the regulatory language itself as a result of comments, the comments and our responses are discussed below.

General Comments

1. *Comment:* One commenter objected to the proposed regulation stating that it is virtually identical to the statute and provides no guidance to the States which is inconsistent with section 1102 of the Social Security Act.

Response: We believe that Federal law and regulations regarding the prohibition of retroactive modification of support arrearages are clear and precise. Guidance is largely unnecessary because the law leaves little room for interpretation. The States should have little trouble implementing these provisions by close adherence to the statutory language.

2. *Comment:* One commenter indicated that the law regarding the prohibition of retroactive modification of support arrearages requires that the other party receive a notice of the petition but does not address sending subsequent notices of court proceedings to that party. The commenter said that notice of each step in the process would enable the custodial parent to participate if desired.

Response: Federal law and regulations only require the party requesting the modification to send the other party a notice regarding the petition to modify support arrearages. State due process requirements should ensure that all parties to a proceeding to modify support arrearages receive a notice regarding any subsequent proceedings. If the State, as assignee of the support rights, receives such notices, the IV–D agency should keep the custodial parent informed regarding the status of any action to modify support arrearages in accordance with the new law.

3. *Comment:* With respect to the delay in implementation built into the statute, a comment was received on the definition of the term "session" as any regular, special, budget, or other session of a State legislature. The commenter suggested that we work with Congress to get the definition of the term "session" revised to include only "regular" sessions of a State legislature.

Response: The term "session," as defined in the delay of implementation provision of the new law, is identical to the definition of the same term found in the delay of implementation provisions in the Child Support Enforcement Amendments of 1984. We believe that the definition of the term "session" as used in these provisions has encouraged the States to implement Federal requirements as soon as possible.

4. *Comment:* One commenter suggested that a Regulatory Flexibility Analysis be conducted due to the additional cost and effort that may be required because of the requirement that support payments are judgments on and after the date they are due.

Response: Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. We believe that the requirement that payments become judgments on and after the date they are due will save the States money and time. The cost of interstate enforcement activities, in particular, will be reduced because there is no longer a need for a State to incur costs or expend efforts to obtain an in-State child support order before the State can enforce past-due support owed under another State's order. Since we believe that the net effect of these requirements will be cost savings, a regulatory flexibility analysis is not required.

Judgment

5. *Comment:* Two commenters indicated that, because any payment or installment is now a separate judgment on and after the date it is due, the collection of support will be more complicated, costly and time consuming. Also, the commenters stated that judgments are obtained for direct collection and to notify third parties, either creditors or potential lenders, that the obligor has a settled debt that can be applied as a lien against property. The commenters further stated that the requirement that each payment or installment of support is a judgment as of the date it is due will confuse third parties who must conduct business based on the current situation of the obligor.

Response: We do not believe that the establishment of separate judgments for each payment or installment of child support on the date it is due makes the collection of support more complicated, costly, and time consuming. States may collect past-due support without seeking additional court or administrative action to reduce the amount due to a judgment. Currently, the States maintain records on the amount of support owed and paid on a monthly or weekly basis. Many States maintain these records on efficient and effective automated systems at minimal cost. The maintenance of information regarding separate judgments should not place an additional burden on the States.

Creditors or potential lenders can seek credit information on absent parents from consumer credit reporting agencies which can request information on child support arrearages from the IV–D agencies, Clerks of Court, or other State payment registries. States should maintain payment records which include the current total of the child support arrearages for each child support case. Child support arrearages should be treated as any other debt, and, if in arrears, the obligation may result in a lien against property of the obligor in accordance with State law.

6. *Comment:* Several commenters indicated that the regulatory provisions regarding payments becoming judgments by operation of State law when they fall due should be revised to indicate that: (1) Judgments must be recorded monthly; (2) the judgment must be accompanied by a certification of the obligee that the amount of the arrearage is accurate; and (3) notice of the judgment must be sent to the obligor. These commenters believe that these changes will virtually eliminate requests from obligors to open or strike a judgment, and lessen the number of errors in the amounts of judgments which impact real estate searches and credit reports.

Response: We do not believe the commenters' suggested changes are warranted. State child support case payment records, in most States, should eliminate the need for: (1) Recording judgments periodically; or (2) obtaining certification from the obligee that the amount of the judgment (arrearage) is accurate. States that have inadequate child support payment records will have to make the changes necessary to maintain current and accurate record keeping systems. There is certainly no need to send a notice of each incremental change in the judgment to

the obligor since he or she is responsible for meeting the obligation and will know when he or she has failed to do so. Finally, Federal law regarding the prohibition of retroactive modification of support arrearages should limit requests from obligors to open or strike a judgment.

7. *Comment:* One commenter objected to the regulatory provision that makes any child support payment or installment, under a support order, a judgment as of the date it is due because: (1) It is contrary to standard law and practice; (2) it raises a Constitutional issue regarding separation of powers; and (3) it violates the obligor's due process rights.

Response: Federal law provides that any payment or installment of support under any child support order is, on and after the date it is due, a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced. The commenter did not explain how the principle of separation of powers is allegedly violated, but this requirement has long been the established law of many States and we are unaware of any challenges on Constitutional grounds. We believe that Congress is simply requiring States to afford child support debts the same status as other court or administratively ordered debts in the State that are considered judgments.

In addition, the commenter did not explain how due process was violated. The child support obligor's due process rights are protected under State law when the support obligation is established. Also, the obligor, subject to enforcement of a child support judgment, is entitled to the same due process protections that apply to the enforcement of other judgments in the State. For example, an obligor who alleges that all payments to the custodial parent have been made, may be entitled under State law to a hearing before the court or administrative authority.

8. *Comment:* One commenter asked how long it generally takes a court to act on a petition for modification of support. The commenter also recommended that the regulations specify a time frame within which a final judgment must be issued after a petition for modification of a support order is filed because the custodial parent may face problems without the additional support.

Response: Historically, there have been large backlogs of child support cases in State courts awaiting resolution. However, as a result of the Child Support Enforcement Amendments of 1984, Federal regulations governing the Child Support Enforcement program at 45 CFR 303.101 require the States to have in effect and use expedited processes (administrative and/or expedited judicial processes) to establish and enforce child support orders. Under expedited processes, actions to establish and enforce support orders in IV–D cases must be completed from the time of filing to the time of disposition within the following timeframes: (1) In 90 percent of all cases, within 3 months, (2) 98 percent in 6 months; and (3) 100 percent in 12 months. This standard also applies to the modification of support orders in IV–D cases under expedited processes unless complex issues are involved requiring judicial resolution (45 CFR 303.101(b)(4)).

Prohibition of Retroactive Modification

9. *Comment:* A commenter indicated that the prohibition of retroactive modification of support orders requirement does not provide exceptions for individuals who are unable to promptly file for modification due to severe injury or sudden lengthy illness. Several commenters objected to the prohibition of retroactive modification of support because it requires the obligor who obtains custody of a child or is temporarily out of work to immediately file a petition to modify the support order and applies to the obligor who may have to satisfy arrearages that accrued after a child died or was emancipated.

Response: Federal law does not provide for any exception to the prohibition of retroactive modification of support arrearages other than for the period after the date notice of the petition for modification is given until the modification occurs. Congress in Senate Report No. 99–348, page 155, and in the Conference Report No. 99–1012, Page 273, indicated that, if the non-custodial parent's circumstances change because of unemployment, illness or another such reason, the non-custodial parent is responsible for notifying the custodial parent and the court or entity that issued the child support order of the changed circumstances and his or her intention to modify the support order. The obligor is in the best position to know of a change in circumstances and bring it to the attention of the court or administrative authority.

It is the obligor's responsibility to take action promptly to seek modification of a support obligation based on a change in his or her circumstances. The obligor or his or her representative should immediately, upon the development of any circumstances that inhibit his or her ability to pay support, file a petition with the court or administrative authority to modify the support order. These circumstances might include: (1) The obligor is unable to pay support due to confinement or incarceration in a mental or penal institution; (2) the child goes to live with the obligor; (3) the child is emancipated or dies; (4) the obligor becomes permanently, or temporarily disabled, or seriously ill, with no benefits, earning capacity or assets; or (5) the obligor becomes unemployed. If the obligor cannot afford legal counsel, the obligor should seek assistance from any available public legal services.

Federal law and regulations do not preclude the States from having laws that permit automatic prospective suspension or prospective termination of the support obligation upon the development of specific circumstances such as the emancipation or death of a child. Such "modifications by operation of law" upon the occurrence of an event known to both parties, if applicable generally to all child support orders in the State, would not appear to contradict the intent of the law. We would caution, however, that any apparent "exceptions" to the general rule barring retroactive modification of support orders will be closely scrutinized for purposes of determining State IV–D plan conformity.

Enforcement of child support judgments should be treated the same as enforcement of other judgments in the State, and a child support judgment would also be subject to the equitable defenses that apply to all other judgments. Thus, if the obligor presents to the court or administrative authority a basis for laches or an equitable estoppel defense, there may be circumstances under which the court or administrative authority will decline to permit enforcement of the child support judgment. We do not, however, believe that a temporary loss of employment or even a change of actual custody of the child should result in a modification of support liability unless the court or administrative authority is duly notified and sanctions such modification.

10. *Comment:* Another commenter indicated that the provisions regarding the prohibition of retroactive modification of support arrearages result in deprivation of Constitutional rights, denial of due process, and lack of equity and fair play in cases in which there are changes in circumstances and, for various reasons, the obligor does not seek to modify the order. Several commenters objected to the prohibition of retroactive modification of support because the requirement will cause substantial litigation due to the denial of

property and other rights and due process to obligors.

Response: Federal law and regulations provide that child support judgments will be treated in the same manner as any other judgment in the State. A child support debtor whose circumstances change is entitled to the same fairness and equity defenses and due process rights as other judgment debtors in the State. An obligor subject to the enforcement of a child support judgment is entitled to the same due process protection and statutory exemptions that apply to the enforcement of other judgments within the State.

We encourage States to establish expedited procedures for modification of child support judgment orders whenever there is a substantial change in the circumstances of either party. State laws and court orders can provide for prompt, efficient modifications of support obligations when deemed appropriate. In addition, some occurrences (e.g., death or emancipation of a dependent child) might be construed under State law as triggering automatic prospective termination or modification of the support obligation to avoid inequitable results.

11. *Comment:* Three commenters objected to the prohibition of retroactive modification of support arrearages because it replaces the case-by-case review by the judiciary which they believe is necessary to ensure fairness and equity. For example, if the obligor loses his or her job or becomes seriously ill and lacks the funds or knowledge to pursue immediate modification of the support order, arrearages will accrue which otherwise might have been avoided. Several commenters objected to the prohibition of retroactive modification of support because it limits judges' discretion and authority and prohibits the obligor from challenging improperly calculated arrearages.

Response: Federal law and regulations will require some States to amend laws and to limit judicial discretion and authority regarding the retroactive modification of support arrearages. In a relatively small number of cases there may be situations where obligors fail to seek or are unable to obtain prompt modifications to which they may have been entitled. We believe, however, that this law remedies a greater inequity which previously occurred in many more cases where a child support obligor, through his or her own neglect or refusal to comply with the support order, incurred arrearages which were subsequently reduced or forgiven entirely by the court. In such situations the obligor's children paid the consequences through no fault or responsibility of their own. We encourage States to enact laws providing expedited procedures for prompt modification of support obligations whenever circumstances change (e.g., an obligor becomes incapacitated). In addition, the courts or administrative authority should provide guidance when child support orders are entered encouraging either party to notify the court or administrative authority when circumstances change.

Federal law and regulations do not prohibit the correction of improperly calculated arrearages; the IV–D agency, judiciary or administrative authority may correct any improperly calculated arrearages.

12. *Comment:* A commenter suggested that the proposed regulations be revised to permit retroactive reduction of support arrearages if a determination is made that failure to pay support was not willful. The commenter indicated that incarcerated individuals unable to obtain prompt legal representation would be assisted by this change. Another commenter indicated that the proposed regulations place a hardship on incarcerated individuals who are, for the most part, incapable of paying support, or securing legal counsel.

In addition, several commenters suggested that the regulations be revised to indicate that when a person is confined to jail, prison or a mental health institution or treatment facility, the initial date of confinement is constructive notice that a petition to revise the support obligation during the period of incarceration or confinement is pending. The commenters believe that this change is necessary because: (1) Many inmates do not have prompt access to legal assistance or the courts; (2) the ability to pay support is affected by incarceration or confinement; (3) support arrearages that accrue while an individual is confined or incarcerated cannot be modified once an individual is released; and (4) the accumulation of support arrearages while an individual is confined or incarcerated may discourage an individual from working while incarcerated or upon release.

Response: The obligor, including an incarcerated individual, is generally responsible for filing a request for modification of the support order with the appropriate court or administrative authority immediately upon any change in circumstances which affects the ability to pay, or need for support. The law does not provide any exception for obligors who failed to file in a timely manner for any reason including lack of knowledge regarding the process, prompt access to counsel, and lack of money. If the obligor cannot afford legal counsel, the obligor should seek assistance from available public legal services or should contact the court or administrative authority directly.

The Federal Government does not prescribe State requirements for notice of filing a petition to suspend or modify a support obligation. The State's own procedures of due process specify exactly what notice is required in the circumstances presented by the commenter. It would appear that States might enact laws that could provide for automatic prospective suspension of support obligations when a person is placed in a hospital or institution and does not have the assets or unearned income necessary to meet the support obligation if such laws applied generally to all judgment debtors in the State. Some obligors may, however, have assets or investment income which are adequate to meet their obligations even during periods of temporary unemployment. We believe that most modifications should be subject to approval of the court or administrative authority, and that the obligor is usually in the best position to bring changes in his or her circumstances to the court's or administrative authority's attention.

13. *Comment:* One commenter suggested that the regulations be revised to indicate that prohibition of retroactive modification of support arrearages in the 18 States that permitted such modification before the new law be a "rebuttable presumption" rather than an absolute prohibition.

Response: Federal law does not allow exceptions to the prohibition of retroactive modification of support arrearages for some States based on their past practices, and we believe the proposed change to the regulation would be improper. The prohibition applies on the same basis to all States; States may not use a "rebuttable presumption" standard.

14. *Comment:* One commenter suggested that the regulations be revised to permit the parties (obligee and obligor) to stipulate to a retroactive reduction of the child support arrearage if the obligor agrees to make an immediate lump sum payment. Several commenters suggested that the regulations be revised to permit retroactive modification of support arrearages by agreement of the parties. A commenter also asked whether a State law that permits a court approved agreement between the parties to retroactively modify a support order is consistent with section 9103 of Pub. Law 99–509. If not, the commenter further suggested that the regulations indicate

that this is not permissible. Another commenter suggested that the regulations be revised to clarify that the prohibition of retroactive modification of support arrearages does not provide for any judicial or parental discretion.

Response: Federal law and regulations provide that child support is a judgment on and after the date due with the full force, effect and attributes of a judgment of the State. Such support judgments may, however, be compromised or satisfied by specific agreement of the parties on the same grounds as exist for any other judgment in the State. Judgments involving child support arrearages assigned to the State under titles IV–A, IV–E and XIX of the Social Security Act, of course, may not be compromised by an agreement between the obligee and obligor unless the State, as assignee, also approves such an agreement. State law may require that any agreement affecting child support orders must be endorsed by the court or administrative authority to ensure that the best interests of the child are protected.

15. *Comment:* One commenter asked whether the law regarding the prohibition of retroactive modification of support arrearages applies to a custodial parent's request to increase the amount of arrearages and future payments. The commenter further asked whether, if the new law applies to this situation, does the modification apply as of the date the obligor receives notice of the petition.

Response: Federal law and regulations permit an upward modification of the support order and related arrearages for any period during which a petition is pending for modification, but only from the date notice has been given, either directly or through the appropriate agent, to the obligor.

16. *Comment:* One commenter asked about the extent of IV–D agency responsibility for judicial compliance with the prohibition of retroactive modification requirements.

Response: OCSE approval of a State plan amendment regarding the prohibition of retroactive modification of support arrearages requirements is dependent upon whether the State has in effect the necessary State laws and procedures required by the new Federal law. Judges would be required by State law to comply with the prohibition of retroactive modification requirements.

Federal law requires each State to operate a Child Support Enforcement program throughout the State in accordance with the requirements of title IV–D of the Social Security Act, including the prohibition of retroactive modification of support arrearages. To ensure that a State has an effective Child Support Enforcement program, OCSE conducts an audit of each State's Child Support Enforcement program, at least once every three years, to determine whether the State is in substantial compliance with the requirements of title IV–D of the Act. If, as the result of an audit, a determination is made that the State did not substantially comply with the requirements regarding the prohibition of retroactive modification of support, the State will be subject to a reduction of Federal funding under title IV–A of the Act.

17. *Comment:* One commenter suggested that the regulations be revised to specify that, at the time the support obligation is established, the obligor be notified of the requirements regarding the prohibition of retroactive modification of support arrearages. The commenter also suggested that the regulations be revised to require prison administrators to give immediate notice to inmates regarding the prohibition of retroactive modification of support arrearages requirements.

Response: Federal law and regulations do not prohibit the State from notifying the parties, at the time the support order is established, or, in the case of incarceration, at the time of incarceration, notifying the obligor, of the prohibition of retroactive modification of support arrearages requirements. We believe that the States are in the best position to determine the means, and under what circumstances, notice should be provided.

18. *Comment:* A comment was received on the requirement that arrearages may be modified, but only from the date notice of the petition for modification has been given to the obligee, or where the obligee is the petitioner, to the obligor. The commenter suggested that this provision refers to the date action is filed and notice is issued or the date the notice is issued if the notice is not issued on the same date the petition is filed, rather than the date notice is received by the opposing party. The commenter's rationale was that it is consistent with general law that the court's powers are invoked and exercisable as of the date the petition is filed and notice is sent to the other party. The commenter believes that the legislative history regarding the prohibition of retroactive modification of arrearages supports this position.

A second commenter suggested that the regulations be revised to permit retroactive modification of support arrearages as of the date the notice is filed, rather than the date of service on the obligor because most motions to modify include requests to increase the support order and the obligor will attempt to avoid service of process. Several other commenters also recommended that the regulations be revised to permit retroactive modification of support arrearages as of the date the petition is filed. One of these commenters indicated that the preamble does not address why the regulation requires the States to abandon the longstanding legal principle that a judgment may be modified retroactively at least to the date it is filed. Another commenter suggested that the regulations be revised to indicate that modification of support arrearages can take place during any period in which a petition for modification is pending if the party seeking modification of support arrearages shows diligence in providing notice to the other party because various tactics will be used by the obligor to avoid service of process.

Finally, a commenter asked that we explain the meaning of the word "given" as used in the phrase "the date notice of the petition has been given" in the proposed regulations.

Response: Federal law permits the retroactive modification of support arrearages during any period in which a petition for modification is pending, but only from the date that notice of the petition has been given, either directly or through the appropriate agent, to the obligee, or where the obligee is the petitioner, to the obligor. The regulatory requirement mirrors the Federal statutory language. We believe Congress intended that "date of notice" or "date notice is given" should be construed literally and in terms of acquiring personal jurisdiction over the other party. State law provides rules to determine when personal jurisdiction is acquired by service of notice of an action. Under these provisions, the "date of notice" or "date notice is given" should be interpreted by the State in the same way as it is generally applied to commence other civil litigation within the State. State law regarding the establishment of the date of notice that a petition has been filed dictates when the modification may be effective. The date of notice may be the same date on which the petition is filed if "notice is given" on the same date by publication or other means and personal service is not required under State law.

Although the effective date of any modification is tied to the date notice of the petition is given, we believe notice through the mail or other means may be sufficient so long as the State has

acquired personal jurisdiction over the other party under State law. Thus, the party named in the petition could not necessarily avoid the process server to delay the effective date of any modification. However, the date of notice is subject to State due process requirements. Consequently, some States may tie "date of notice" to actual receipt of personal service if that is the standard in the State for securing personal jurisdiction over the opposing party in a modification proceeding.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291 that this rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy is less than $100 million;

(2) This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) This rule will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. For this rule, the principle impact is on State IV–D agencies who will be required to expend minimal effort, and on the judicial system. This provision could potentially save money for both the Federal Government and the States by increasing amounts available for collection and reducing the costs of collecting support. Further, the cost of interstate enforcement activities will be reduced by eliminating the need to obtain a child support order in more than one State. Therefore, a regulatory flexibility analysis is not required.

List of Subjects

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

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

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: September 26, 1988.

Wayne A. Stanton.

Director, Office of Child Support Enforcement.

Approved: October 4, 1988.

Otis R. Bowen,

Secretary.

Editorial Note: This document was received by the Office of the Federal Register, April 14, 1989.

For the reasons set out in the preamble, Title 45, Chapter III of the Code of Federal Regulations is amended as follows:

PART 302—[AMENDED]

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

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

2. Section 302.70 is amended by amending paragraph (a) by: revising the introductory text; removing the word "and" at the end of paragraph (a)(7); removing the period at the end of paragraph (a)(8) and inserting "; and" in its place; and, adding paragraph (a)(9) to read as follows:

§ 302.70 Required State laws.

(a) *Required laws.* Effective October 1, 1985, with respect to paragraphs (a)(1) through (8) of this section, and effective October 21, 1986, with respect to paragraph (a)(9) of this section, the State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve program effectiveness:

* * * * *

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (a)(2) of this section, is (on and after the date it is due):

(i) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(ii) Entitled as a judgment to full faith and credit in such State and in any other State; and

(iii) Not subject to retroactive modification by such State or by any other State, except as provided in § 303.106(b).

* * * * *

PART 303—[AMENDED]

3. 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).

4. Part 303 is amended by adding § 303.106 to read as follows:

§ 303.106 Procedures to prohibit retroactive modification of child support arrearages.

(a) The State shall have in effect and use procedures which require that any payment or installment of support under any child support order is, on and after the date it is due:

(1) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(2) Entitled as a judgment to full faith and credit in such State and in any other State; and

(3) Not subject to retroactive modification by such State or by any other State except as provided in paragraph (b) of this section.

(b) The procedures referred to in paragraph (a)(3) of this section may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

PART 305—[AMENDED]

5. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

6. Part 305 is amended by adding § 305.57 to read as follows:

§ 305.57 Retroactive modification of child support arrearages.

For the purposes of this part, in order to be found in compliance with the State plan requirement to prohibit the retroactive modification of child support arrearages (45 CFR 302.70(a)(9)), a State must have in effect laws which provide that any payment or installment under any child support order is, on and after the date it is due, a judgment and be using procedures which prohibit retroactive modification of child support arrearages as provided in 45 CFR 303.106 of this chapter.

[FR Doc. 89-9357 Filed 4-18-89; 8:45 a.m.]
BILLING CODE 4150-04-M