

distributed within 2 days, as there may be appeals of these types of collections. We will consider changes to time frames applicable to interstate cases in the next revision to § 303.7 under a Notice of Proposed Rulemaking.

#### *Review and Adjustment of Child Support Orders—§ 303.8*

1. *Comment:* There were two comments concerning definitions for “review” and “adjustment” that were in the former § 303.8. One commenter suggested that we retain the former definitions of “review” and “adjustment”, but rename them as “guidelines review” and “guidelines adjustment”. The commenter made this suggestion because most States will continue with guideline reviews.

The second commenter believed that the language for this section might be construed to mandate administrative reviews. The commenter suggested that we amend the regulation by including a process for challenging a proposed adjustment or determination, apart from the review that takes place in the judicial setting. The commenter believes that if their State complies with the new provisions, there would be no proposed order or adjustment. In the commenter’s State, a litigant files a motion with the court, the court rules on the motion; and either party can appeal the order.

*Response:* We agree with these comments. We have reinstated the terms “review” and “adjustment” from the former § 303.8(a)(1) and (3) as applicable to guidelines reviews only.

Reinstating the definition of “review” also clarifies that reviews are not mandated to be conducted only by administrative process. The definition for “review” includes “proceeding before a court, quasi-judicial process, or administrative body”.

2. *Comment:* One commenter was concerned that the 15-day timeframe to determine whether to conduct a review was eliminated.

*Response:* The 15-day timeframe to determine whether or not to conduct a review was removed because it conflicts with the requirement that States review, at least once every 3 years, any case upon receipt of a request for review.

3. *Comment:* We received a few comments about notices. Two commenters questioned whether the requirement to provide the notice of the right to request a review is met by placing such notice in the order. Another commenter asked, in a case with multiple orders, which State sends the notice of the right to request a review and the notice of the results of the review. A fourth commenter asked when to send these notices and how to

implement this requirement since each case has a different date of application, different date of review, and States vary in frequency permitted between reviews.

*Response:* Section 466(a)(10)(C) of the Act requires the State to provide notice to each parent subject to the order not less than once every 3 years informing them of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The paragraph also states that the notice may be included in the order. Including the notice in the order merely takes care of the first year requirement; the triennial requirement must still be fulfilled.

With respect to cases with multiple orders, the State that is working the case should send the notice of the right to request a review, or if it issues an order, may include the notice in the order. Notice of the right to request a review must be sent every 3 years thereafter if the State continues to work the case. Any State that conducts a review must send the notice of the results of the review. A review conducted in a case with multiple orders would include a determination of the controlling order and reconciliation of all arrearages under the orders in accordance with the Uniform Interstate Family Support Act (UIFSA). Once a controlling order determination is made, UIFSA governs who has jurisdiction to adjust or modify the controlling order.

Since section 466(a)(10)(C) was effective October 1, 1996, States should have notice procedures in place. Each State has authority to meet this requirement in a manner that is most efficient for its system and resources. Notices can be sent all at one time or on a staggered basis according to the State’s own procedures.

4. *Comment:* There were two comments regarding the use of thresholds and change of circumstances. One commenter noted that an Office of Inspector General report indicated that 40 States maintained the requirement to meet thresholds showing a substantial change in circumstances before a review is conducted or an adjustment is made, which they use regardless of the frequency of reviews. The commenter asked whether thresholds for the 3-year reviews upon request could be less prohibitive than the thresholds for reviews that are conducted more frequently that require a substantial change of circumstances. Another commenter thought that even the 3-year reviews should require a substantial change in circumstances since it is required by the more frequent reviews.

*Response:* States may not require proof or a showing of a change in

circumstances in a 3-year review upon request. Under section 466(a)(10)(A)(iii) of the Act, and upon request, 3-year reviews, and adjustment, if appropriate, are automatic, without any proof of a change of circumstances. If a party desires a review sooner than once every 3 years, the party must show a substantial change of circumstances for an adjustment of the order, consistent with section 466(a)(10)(B) of the Act.

In reviewing § 303.8 and the comments received, we determined that the changes made by the interim final rule were not fully reflective of the statutory requirements in section 466(a)(10) of the Act and that this was leading to confusion about what States must do to meet the requirements. Therefore, in addition to reinstating the definitions for “review” and “adjustment” from the original regulation in response to comments, we have decided to replace the paragraph (b) language published in the interim final rule with the language in the statute at section 466(a)(10) of the Act. We are revising paragraph (c) to clarify that States may use a quantitative standard only in cases involving the use of automated methods in accordance with section 466(a)(10)(A)(i)(III) of the Act. That section alone refers to orders being “eligible for adjustment,” recognizing there might be some standard set to determine eligibility for adjustment. The other two methods of review (guidelines and cost-of-living) do not contain this language. Sections 303.8(a) and (d) through (f) remain as published in the interim final rule. A summary of the changes to this section follows.

We are revising paragraph (b)(1) by restating the requirements of section 466(a)(10)(A)(i)(i) of the Act that the State must have procedures under which reviews are performed every 3 years upon request of either parent or, in the case of an assignment under part A, upon the request of the State agency, taking into account the best interests of the child. For clarity, and consistency with section 466(a)(10) of the Act, paragraph (b)(1)(i) is added to the regulation to explain guideline reviews; paragraph (b)(1)(ii) is added to explain cost of living adjustment (COLA) reviews; and paragraph (b)(1)(iii) is added to explain the automated reviews. These three subparagraphs repeat the statutory requirements of section 466(a)(10)(A)(i)(I)–(III).

Current paragraph (b)(2) of the regulation is redesignated as paragraph (b)(6) and revised to be consistent with the statute, as discussed below.

We are adding a new paragraph (b)(2) which restates section 466(a)(10)(A)(ii)