of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 11, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (256) (D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(256) * * *

(i) * * *

(D) El Dorado County Pollution Control District .

(*1*) Rule 239 adopted on March 24, 1998.

* * * * *

[FR Doc. 99–7668 Filed 3–29–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

RIN 0970–AB72

Child Support Enforcement Program; Grants to States for Access and Visitation Programs: Monitoring, Evaluation, and Reporting

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements provisions contained in section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and establishes the requirements for State monitoring, reporting and evaluation of Grants to States for Access and Visitation Programs. Access and Visitation programs support and facilitate non-custodial parents' access to and visitation of their children by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup) and development of guidelines for visitation and alternative custody arrangements.

EFFECTIVE DATE: April 29, 1999.

FOR FURTHER INFORMATION CONTACT: David Arnaudo, OCSE, Division of Automation and Special Projects, (202) 401–5364. Hearing impaired individuals may call the Federal Dual Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The final regulations are published under the authority of section 469B of the Social Security Act (the Act), as added by section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193), and section 1102 of the Act. Section 469B(e)(3) requires that each State receiving a grant for Access and Visitation Programs shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Background

Notice of Proposed Rulemaking

On March 31, 1998 a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register**. Public comments were formally requested. Comments received in response to this request are discussed and summarized below.

History of Federal Involvement in Access and Visitation

The Federal financial involvement in access and visitation began when the Family Support Act of 1988 (Pub. L. 100–485) authorized up to $4 million each year for fiscal years 1990 and 1991 for State demonstration projects to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders. The legislation required an evaluation of these projects and a Report to Congress on the findings. In October 1996, the Department of Health and Human Services transmitted to Congress the report entitled, ''Evaluation of the Child Access Demonstration Projects''. The report indicated that requiring both parents to attend mediation sessions and developing parenting plans was successful for cases without extensive long-term problems.

In September, 1996, the U.S. Commission on Child and Family Welfare submitted a report to the President and Congress which strongly endorsed additional emphases at all government levels, especially State and local levels, to ensure that each child from a divorced or unwed family have a parenting plan which encourages and enables both parents to stay emotionally involved with the child(ren).

Finally, PRWORA added a new provision at section 391 to award funds annually to States to establish and administer programs to support and facilitate non-custodial parents' (fathers or mothers) access to, and visitation of, their children. Activities funded by this program include mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, neutral drop-off and pickup), development of guidelines for visitation and alternative custody arrangements. States may administer programs directly or through contracts or grants with courts, local public agencies, or nonprofit private entities; States are not required to

operate such programs on a statewide basis.

Under this provision, the amount of the grant to be made to the State shall be the lesser of 90 percent of State expenditures during the fiscal year for activities just described or the allotment to the State for the fiscal year. The Federal government will pay for 90 percent of project costs, up to the amount of the grant allotment. In other words, States are required to provide for at least ten percent of project funding even if they do not spend their entire allotment. The allotment would be determined as follows: an amount which bears the same ratio to $10,000,000 for grants as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States. Such allotments are to be adjusted so that no State is allotted less than $50,000 for fiscal years 1997 and 1998 or $100,000 for any succeeding fiscal year. These funds may not be used to supplant expenditures by the State for authorized activities; rather, States shall use the grant to supplement such expenditures at a level at least equal to the level of such expenditures for fiscal year 1995.

In September 1997, the Office of Child Support Enforcement awarded 54 States and independent jurisdictions Access and Visitation Grants covering all the activities mentioned in the Act. A second round of grants was issued in September 1998; all States and Territories, except Guam, received grants. Guam did not apply.

Description of Regulatory Provisions

Paragraph 303.109(a) has been added to 45 CFR part 303 containing procedures for States to follow in monitoring, evaluating and reporting on their Grants for Access and Visitation Programs. This rule requires States to monitor all access and visitation programs to ensure that these programs are: (1) Providing services authorized under section 469B(a) of the Act; (2) being conducted efficiently and effectively; (3) complying with reporting and evaluation requirements, as set forth in paragraphs 303.109(b) and 303.109(c); and (4) providing appropriate safeguards to insure the safety of children and parents.

Paragraph 303.109(b) allows States to evaluate programs funded by section 469B of the Act, but does not *require* these programs to be evaluated. States are, however, required to assist in the evaluation of programs deemed significant or promising by the Department, as directed by program memorandum.

Paragraph 303.109(c) requires that States provide a detailed description of each funded program including such information as: service providers and administrators, service area, population served, program goals, application or referral process, referral agencies, nature of the program, activities provided, and length and features of a ''completed'' program. This paragraph also requires, with regard to programs which provide services: the number of applicants or referrals for each program, the total number of participating individuals and the number of persons completing program requirements by authorized activities (*e.g.,* mediation, education etc.). This information will help the Office of Child Support Enforcement assess: (1) The demand for the program, the effectiveness of outreach and ability of the program to meet demand; (2) the services being delivered and the number and the characteristics of the individuals being served; and (3) whether such individuals are completing standard program requirements.

Paragraph 303.109(c)(3) requires States to report information specified in paragraphs 303.109(c)(1) and (c)(2) annually, collected at a date and in a form as the Secretary may prescribe.

Response to Comments

We received comments from representatives of 14 States and local IV–D agencies, national organizations, advocacy groups and private citizens on the proposed rule published March 31, 1998, in the **Federal Register** (63 FR 15351–53). A summary of the comments received and our responses follows; similar or identical comments have been grouped together:

Comment: One commenter suggested that § 303.109(a) of the regulation calling for monitoring of ''*all* access and visitation programs'' should be restricted to mean only those programs funded by DHHS' grants to States for Access and Visitation Programs and other funded programs.

Response: In this final rule, OCSE states that: ''The State must monitor all programs funded under Grants to States for Access and Visitation Programs * * *.'' This addresses the commenter's concern. In one section of the NPRM this qualifier, ''funded under Grants to States for Access and Visitation Programs'', was not used, thereby giving an inaccurate impression. It was not our intent to extend the monitoring requirement to other funded programs.

Comment: There was a concern among commenters that the regulation contains no requirement to monitor whether States are screening potential clients for domestic violence (spousal or child abuse) to ensure that the battered spouse is not put at further risk.

Response: We share the concerns for safety expressed by commentators who wrote about domestic violence. Access and visitation by a non-custodial parent can lead to dangerous situations for some parents and their children. The safety of the custodial parents and their children must be addressed when it is a problem. It is our intent to encourage States to ensure safety when necessary in implementing grants under this program. States should develop procedures to assess the degree of danger, weighing sensitively the assertions of both parents.

In response to the comments, we have added to the regulation a new requirement under § 303.109(a) requiring States to monitor programs to safeguard against domestic violence, as follows:

''(a) *Monitoring.* The State must monitor all programs funded under Grants to States for Access and Visitation Programs to ensure that the programs * * * *contain safeguards to ensure the safety of parents and children*.''

Comment: Several commenters suggested that the regulation require specific approaches for addressing problems that may occur in activities funded by these grants. Concerns were noted regarding mandated mediation and supervised transfer and visitation of children.

Response: Since we wish to provide maximum flexibility to the States, we have not required specific approaches to dealing with issues of domestic violence. Consistent with our authority under the Statute to regulate what the States need to monitor, we require States to monitor their grantees to ensure that there are procedures in place and being used to ensure safety.

Regarding mandated mediation, we wish to make clear that the statute does not mandate mediation for any particular clients. Mediation mandated by the courts for contending parents is one service that the States may chose to fund. We recognize that in some cases, mediation may be dangerous for the victim of abuse. There is also evidence that in some cases involving partner abuse, mediation has been effective. This is a service that warrants careful monitoring by States to ensure that safety assessments are conducted. When it is determined not to be warranted, alternative forms of conflict resolution should be used.

States may choose to use their grants to fund supervised transfer and visitation of children by non-custodial

parents. Neutral drop-off or pickup of children (supervised transfer) is designed to provide for the transfer of children without danger for the abused parent or hostile actions between the parents when domestic violence or other situations involving acrimony between parents exist. Supervised visitation is designed to promote and protect the safety of the visited child. States should monitor such programs when funded by this authority (as discussed above) to ensure that adequate and appropriate procedures are in place and being used to ensure safety.

Comment: Commenters suggested that grantees be required to consult local domestic violence agencies about appropriate procedures for identifying and assisting battered parents.

Response: Based on our experience with other service sectors that have addressed domestic violence, consultation with community based domestic violence experts is often very useful. While requiring such consultation would go beyond the scope of this regulation, we do believe domestic violence experts have important experience and knowledge that can be useful to access and visitation programs. We encourage all access and visitation grantees to hold consultations with experts in the field of domestic violence.

Comment: One commenter wanted to include domestic violence as one category of participant data reported.

Response: We have not included domestic violence as a category of participant data reported because the quality of information collected is not likely to be consistent or useful. It would be difficult to reach any agreement for reporting responses on how domestic violence should be defined or how the determination would be made that domestic violence had occurred. Additionally, services and targeted clientele will vary widely from State to State, and even within States, making comparisons even more inappropriate. We do encourage States to use their own State protocols and definitions of domestic violence to monitor and evaluate how their programs are protecting the safety of parents and children.

Comment: One commenter suggested that Grants for Access and Visitation Programs be conducted by those with domestic violence training.

Response: The legislation mandates that the Governor of each State determine the organizational entity responsible for the grant program. Each State has the flexibility and responsibility to determine the services to be provided and qualifications of the providers.

Comment: Another domestic violence related concern is that the final rule should acknowledge that domestic violence occurs in many of the access and visitation cases before the family court and, therefore, the statement that involvement by non-custodial parents is desirable for children should be dropped or amended.

Response: In response to the concern about domestic violence we have added to the regulations a requirement that all States monitor access and visitation programs to ensure that programs have safeguards to ensure the safety of parents and children.

Comment: One commenter stated that visitation and access should not be mandatory for the non-custodial parent. The commenter also suggests that evaluation requirements should look at the success of visitation and not just the number of visits.

Response: The Act does not require the noncustodial parent to visit the child; rather, it funds activities to facilitate and encourage non-custodial parents to participate in raising the child(ren) as determined appropriate by the parents and the court. There are no specific evaluation requirements placed on either State or Federal government evaluation activities regarding visitation programs or any other allowable services provided under the program. We would encourage any evaluators of visitation programs to carefully determine the most appropriate measures of success for program evaluation purposes.

Comment: One commenter had several suggestions:

(i) OCSE should include in the monitoring requirements that States assure that the Access and Visitation Programs funded under Federal grants do not merely replace existing programs.

Response: Section 469B(d) of the Act does not allow States to supplant or use Federal funds authorized under this Act to replace or displace State funds spent for the same purposes as specified by section 469B(a) of the Act. States must use these Federal grant funds to supplement these expenditures at a level at least equal to the level of such expenditures as existed in fiscal year 1995. States are required to follow all requirements in the statute, therefore, it is not necessary to repeat the requirement in the regulation.

(ii) OCSE should prohibit use of funds for programs that are available only to children of divorced or separated parents, on the one hand, or children of unmarried parents on the other hand.

Response: The philosophy of this Act is to allow States maximum flexibility. Some States may concentrate their efforts only on unwed families (or on divorced families) because there are already State programs serving other families. We would not want to limit the flexibility States have under this act to address unmet needs.

(iii) OCSE should require that the States report on the economic status of program participants.

Response: This has been done in the reporting requirements for a description of the program under § 303.109(c)(1) of this final regulation. Under these requirements States must report as follows:

(c) *Reporting:* the State must: report a detailed description of each program funded, providing the following information as appropriate: * * * population served (income * * *) * * *.

(iv) OCSE should involve experts on the life situations and needs of the children of unmarried parents in setting up their programs.

Response: The philosophy behind this program is to give the States maximum flexibility. Most States are delivering programs through experienced community-based organizations or court agencies.

Comment: One commenter noted that some States are using grant funds in the first year to assess which access and visitation program strategies to undertake; in such States there would be no reporting of cases. Reporting requirements are only where services are provided.

Response: It is appropriate to footnote any report with this information. Thus no change needs to be made to the regulation.

Comment: Two commenters had comments on reporting responsibilities and definitions as follows: In the requirement for description of project—§ 303.109(c)—an addition should be made for ''outcome measures''. There should be some data elements that measure whether the program is achieving its goals; the current data elements do not.

Response: We have chosen not to include outcome measures in our initial reporting requirements. First, States can and are providing a wide variety of services. It would be premature at this early stage of program implementation to specify a limited set of outcomes, that may or may not measure the outcomes or changes that States are attempting to achieve. Second, program outcomes in this area are often difficult and expensive to measure. Given the limited resources of this program it is more cost

effective to focus routine reporting on service delivery and use evaluation efforts to measure outcomes.

Comment: The data requirement for program ''graduates'' could be meaningless due to definitional inconsistencies between States and projects.

Response: For clarity, we have revised the wording to read: ''Number of persons who have completed program requirements.'' Even though each program and project may have a different set of program requirements for recipients, this data element will measure the extent to which programs were successful in ensuring that participants completed these requirements.

Comment: In § 303.109(a) ''effective'' and ''efficient'' should be defined.

Response: Effective means whether the programs are actually doing what they are intended to do. Efficient means that they are accomplishing their mission using a reasonable amount of resources. Because each State may provide very different services there is no way to standardize these definitions for reporting purposes.

Comment: ACF should work with States to create a standardized database to track program information.

Response: Given the variety of programs, this is what we have attempted to do, while at the same time preserving State flexibility and minimizing burden.

Comment: ''Urban/rural'' as part of the required description of a project should be defined due to the different nature of rural and urban in States of different sizes.

Response: We are not making a change in the regulation. However, in the instructions that accompany the reporting form, we have indicated that an urban project is defined as operating within a Standard Metropolitan Statistical Area (SMSA) and that a rural project is defined as operating outside a SMSA. We have added the category ''mixed'' to cover a project area that serves both SMSA and non-SMSA areas.

Comment: There are two comments about reporting on the nature of the referral. One commenter suggested that the providers should have to report on the type of the referral. Another commenter indicated that in § 303.109(c)(2), referral reporting should distinguish between court-referred and self-referred.

Response: The regulation at § 303.109(c)(2) does indicate that the source of referral will be included in the reporting requirements. Source of referral will include such categories as courts, social services agencies, responsible fatherhood programs, churches and self-referral. Additionally, the reporting forms will indicate whether clients are receiving services on a mandatory or voluntary basis. In general, mandatory services will include services that a court or other agency requires an individual to participate in. Voluntary services will include non-mandatory referrals and self-referrals. We believe these two categories of source of referral and mandatory versus voluntary participation will provide us with the information we need about the nature of participation. Self-referred relates to individuals signing up for access and visitation services on their own accord or on a voluntary basis.

Comment: What is meant by program participant families and individuals?

Response: We have revised the final rule to ask only for information on individuals. We have done this to avoid confusion about reporting of families or individuals. This is because in some cases only the non custodial parent receives services. However, sometimes services would be received jointly by both ex-spouses or father and mother as in the case of mediation. Occasionally the child is involved. As such, if we use family as a measure of service, all three of these types could be considered a family; however, the service provider is not given credit for the differential costs of serving different numbers of people. Also, use of individual as opposed to families is easier to do if the family under consideration changes (e.g., if a man applies for services, and then the ex-spouse becomes involved etc.). As such, we would have the States count individuals only and not families; however, on the survey form we would have individuals identified as non-custodial parents, custodial parents and/or child(ren) to provide a more precise definition.

Comment: Does this language contemplate a father and his family in a supervised visitation program? How about a custodial parent? Do all individuals in a family have to be recorded? More precision is needed in defining individuals and families.

Response: As discussed above, we have changed reporting to count individuals only. As such, if a family of three (e.g., husband, ex-spouse, and child) is served, States would count three individuals and not one family. The individual becomes the service unit. In the survey form, individuals would be counted as non-custodial parents, custodial parents and/or child(ren).

In the case of supervised visitation, a non-custodial father and a child or children and a third person (the supervisor) are involved. However, only the non-custodial father and the child or children are served; this translates into two to three or more individual service units. The supervisor would not be considered a service unit since this is part of the service, not someone served.

Comment: The definition of when a program is significant to require an evaluation by the State should be defined. Will such evaluations be funded by the Federal government?

Response: The regulations permit, but do not require, States to evaluate their access and visitation programs. State initiated evaluations can be paid for out of State access and visitation grant funds or other State funds. States must cooperate in any federally initiated evaluations of the access and visitation grant program. It is not possible to determine in advance what type of programs might be considered significant or promising. These decisions will be based on our review of State program activities. Specific decisions regarding cost sharing will be made in the context of specific evaluation designs.

Comment: One commenter recommended that OCSE develop an on-line database for reporting of data. Client satisfaction should be reported.

Response: We will consider the suggestion for an on-line database. We have not included client satisfaction in the requirements since we wanted to avoid complexity and ambiguity.

Comment: One commenter believed that the requirement asking for information on race of recipients is inappropriate, and in many cases where work is handled by the phone, it would be awkward for mediators to ask the race question. The commenter recommended either eliminating this question or making it optional.

Response: We agree that there are circumstances in which it would be inappropriate or awkward. We will therefore include on the reporting form the designation ''unknown'' in recognition that sometimes this information cannot be collected.

Comment: One commenter felt that the State child support enforcement agency should not be required to report on the Access and Visitation Grants when the agency in the State administering this grant is not the child support agency.

Response: We agree. The reporting agency is the State agency administering the Access and Visitation Program. This, in many cases, is not the child support enforcement agency.

Comment: One commenter believed that enforcement of visitation rights is vital.

Response: Visitation enforcement is an allowable program activity under section 469B(a) of the Act. Since there are no specific reporting, monitoring, or evaluation provisions dealing with visitation enforcement in isolation, it is not specifically mentioned in the regulation.

Paperwork Reduction Act

The new regulation at § 303.109(c) contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review and has received approval. The OMB control number is 0970–0178.

Legal Significance Statement: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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 regulation will not result in a significant impact on a substantial number of small entities. The primary impact of the regulation will be on State governments, which are not considered small entities under this 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 the rule is consistent with these priorities and principles. Statutory provisions require States that receive grants for child access and visitation programs to monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this final rule will not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of more than $100 million in any one year. The Department has determined that this rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995.

Congressional Review of Rulemaking

This rule is not a major rule as defined in Chapter 8 of 5 U.S.C. List of Subjects 45 CFR Part 303

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

(Catalog of Federal Domestic Assistance Programs No. 93.597, Grants to States for Access and Visitation).

Dated: March 10, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For reasons stated in the preamble, we are amending 45 CFR Part 303 as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of 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).

2. A new section 303.109 is added to read as follows:

§ 303.109 Procedures for State monitoring, evaluation and reporting on programs funded by Grants to States for Access and Visitation Programs.

(a) *Monitoring.* The State must monitor all programs funded under Grants to States for Access and Visitation Programs to ensure that the programs are providing services authorized in section 469B(a) of the Act, are being conducted in an effective and efficient manner, are complying with Federal evaluation and reporting requirements, and contain safeguards to insure the safety of parents and children.

(b) *Evaluation*. The State:

(1) May evaluate all programs funded under Grants to States for Access and Visitation Programs;

(2) Must assist in the evaluation of significant or promising projects as determined by the Secretary;

(c) *Reporting.* The State must:

(1) Report a detailed description of each program funded, providing the following information, as appropriate: service providers and administrators, service area (rural/urban), population served (income, race, marital status), program goals, application or referral process (including referral sources), voluntary or mandatory nature of the programs, types of activities, and length and features of a completed program;

(2) Report data including: the number of applicants/referrals for each program, the total number of participating individuals, and the number of persons who have completed program requirements by authorized activities (mediation—voluntary and mandatory, counseling, education, development of parenting plans, visitation enforcement—including monitoring, supervision and neutral drop-off and pickup) and development of guidelines for visitation and alternative custody arrangements; and

(3) Report the information required in paragraphs (c)(1) and (c)(2) of this section annually, at such time, and in such form, as the Secretary may require.

[FR Doc. 99–7667 Filed 3–29–99; 8:45 am]

BILLING CODE 4184–01–P