

the States as outlined in Executive Order 12612 (October 26, 1987).

#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the interim rule amending 37 CFR Part 1 which was published at 63 FR 5732-5734 on February 4, 1998, is adopted as a final rule without change.

Dated: June 25, 1998.

**Bruce A. Lehman,**

*Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 303

RIN 0970-AB67

#### Child Support Enforcement Program; Quarterly Wage and Unemployment Compensations Claims Reporting to the National Directory of New Hires

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 453A(g)(2)(B) of the Social Security Act (the Act), as added by section 313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by section 5533 of Public Law 105-33, section 303(h) of the Act, in part, as amended by section 316(g) of PRWORA, and section 3304(a)(16) of the Internal Revenue Code of 1986, as amended by section 316(g) of PRWORA. These provisions require certain State entities to furnish quarterly wage and unemployment compensation data to the National Directory of New Hires or to the Secretary of Health and Human Services. A Notice of Proposed Rulemaking was published in the **Federal Register** on October 7, 1997 (62 FR 52306).

**EFFECTIVE DATE:** The final rule is effective August 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Anne Benson, Policy Branch, OCSE (202) 401-1467, e-mail: abenson@acf.dhhs.gov. Deaf and hearing-impaired individuals may call

the federal Dual Party Relay Service at 1-800-877-8339 between 8:00 a.m. and 7:00 p.m. Eastern time.

#### SUPPLEMENTARY INFORMATION:

##### Statutory Authority

This regulation is published under the authority of section 453A(g)(2)(B) of the Social Security Act (the Act), 42 U.S.C. 653A(g)(2)(B), as added by section 313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193 and amended by section 5533 of Public Law 105-33; section 303(h) of the Act, in part, 42 U.S.C. 503(h), as amended by section 316(g) of PRWORA; and section 3304(a)(16) of the Internal Revenue Code of 1986, 26 U.S.C. 3304(a)(16), as amended by section 316(g) of PRWORA.

This regulation is also issued under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Section 453A(g)(2)(B) of the Act requires the State Directory of New Hires to furnish, on a quarterly basis, data concerning the wages and unemployment compensation paid to individuals to the National Directory of New Hires. Pursuant to section 453A(g)(2)(B) of the Act, the Secretary of the Department of Health and Human Services is required to publish regulations to identify the dates, format, and data elements necessary for the State Directory of New Hires to furnish the quarterly wage and unemployment compensation data to the National Directory of New Hires.

Section 3304(a)(16) of the Internal Revenue Code of 1986 contains requirements that must be included in State Unemployment Compensation laws for employers in the State to receive Federal Unemployment Tax credits. Section 316(g) of Public Law 104-193 amended section 3304(a)(16) of the Internal Revenue Code of 1986 to provide that the wage and unemployment compensation information contained in the records of the State agency administering that program shall be furnished to the Secretary of Health and Human Services, in accordance with regulations promulgated by the Secretary, as may be necessary for the purposes of the National Directory of New Hires under section 453(i)(1) of the Act. The Secretary will maintain the quarterly wage and unemployment compensation data reported pursuant to section 3304(a)(16) in the National Directory of

New Hires (NDNH), which is established pursuant to section 453 of the Act.

Section 303(h)(1)(A) of the Act, as amended by section 316(g) of Public Law 104-193, requires the State agency charged with the administration of the unemployment compensation program, on a reimbursable basis, to disclose quarterly, to the Secretary of Health and Human Services, wage and claim information, as required pursuant to section 453(i)(1) of the Act, that is contained in the records of such agency. As is the case with information reported pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, the Secretary will maintain any quarterly wage and unemployment compensation data reported pursuant to section 303(h) of the Act in the NDNH. Section 303(h)(3)(A) of the Act defines 'wage information' as "information regarding wages paid to an individual, the social security account number of such individual, and the name, address, State, and the Federal employer identification number of the employer paying such wages to such individual." Section 303(h)(3)(B) defines 'claim information' as "information regarding whether an individual is receiving, has received, or has made application for, unemployment compensation, the amount of any such compensation being received (or to be received by such individual), and the individual's current (or most recent) home address." Title III of the Act, Grants to States for Unemployment Compensation Administration, is directly administered by the Department of Labor. We are referencing section 303(h)(1)(A) of the Act because this provision references information required pursuant to section 453(i)(1) of the Act. Section 453(i)(1) is administered by the Department of Health and Human Services, and the information that is required pursuant to that section (which in turn references information supplied pursuant to section 453A(g)(2)) is established in this rule. The Secretary also adopted the definitions included in section 303(h) in the rule in order to enable the implementation of the provisions in an integrated and complementary manner.

#### Background

The Federal Parent Locator Service (FPLS) is a computerized network established pursuant to section 453 of the Act, 42 U.S.C. 653, through which States may request information from Federal and State agencies to find noncustodial parents and/or their employers for purposes of establishing paternity and securing support. The

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires the Secretary to develop an expanded FPLS to improve States' ability to locate child support obligors and to establish and enforce child support orders, as well as for other specified purposes in Title IV-D of the Act. The Office of Child Support Enforcement (OCSE), within the Administration for Children and Families (ACF), is charged with the task of developing, implementing, and maintaining the expanded FPLS. The expanded FPLS is housed in the Social Security Administration's National Computer Center, because locating the expanded FPLS there provides the most efficient and cost-effective mechanism for developing the expanded FPLS, as well as ensuring state-of-the-art standards for system security and confidentiality of the data.

The expanded FPLS includes the National Directory of New Hires and a Federal Case Registry (operational no later than October 1, 1998), and maintains the capability to seek information from existing FPLS data sources, including, but not limited to, the Internal Revenue Service, Social Security Administration, Department of Defense, and Department of Veterans Affairs. The expanded FPLS will perform regular cross matches between the National Directory of New Hires and the Federal Case Registry. With these new FPLS resources, the interstate matching of child support obligors and employment, earnings, and benefits data will flow more efficiently and quickly between States.

The NDNH will contain three types of information. First, the NDNH maintains employment data on newly-hired employees (new hire reporting) submitted by State Directories of New Hires pursuant to section 453A(g)(2)(A) of the Act, and by federal agencies pursuant to section 453A(b)(1)(C) of the Act. Second, the NDNH will maintain quarterly wage information on individual employees received pursuant to sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986, as well as quarterly wage information on federal employees received pursuant to 453(n) of the Act. Third, the NDNH will maintain unemployment compensation claims data received pursuant to sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986. States will be required to transmit new hire, quarterly wage and unemployment compensation claims data electronically to the NDNH.

The purpose of the NDNH is to develop a repository of information on newly-hired employees, and on the earnings and unemployment compensation claims data of employees. The purpose of including quarterly wage and unemployment compensation claims data in the NDNH is to provide States with the ability to quickly locate information on the address of, employment of, and unemployment compensation being paid to, parents with child support obligations who are residing or working in other States. States seek to locate these parents and their employers to either establish or enforce a child support order. Quarterly wage and unemployment compensation claims data will provide information on continuously employed and unemployed individuals who would not be located solely by new hire reporting.

Most States have been matching their quarterly wage and unemployment compensation claims data against their respective State child support caseloads since the 1980's. In addition, since 1990 the Federal Parent Locator Service has conducted cross-matches between State child support locate requests and State Employment Security Agencies, although such matches are currently limited to 250,000 cases per State per bi-weekly cross-match. The information generated from cross-matches between quarterly wage, claims and child support data, both at the State level and in the more limited FPLS context, has proven extremely beneficial for the location of child support obligors and their wages. The inclusion of quarterly wage and unemployment compensation claims data in the NDNH will allow for a substantially higher volume of interstate cross-matching than is currently possible.

The Federal Case Registry will be a national registry of individuals involved in child support cases, constructed from abstracts of child support case and order information that State Case Registries will transmit to the Federal Case Registry. The expanded FPLS, through a matching process between NDNH and the Federal Case Registry, will be able to automatically provide States with information on address, employment, and unemployment compensation claims data on parents owing child support. The expanded FPLS will also alert States to other States that have registered the same individual.

In an effort to be responsive to the President's Memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate burdens on States, other

governmental agencies or the private sector, OCSE formed an FPLS workgroup which held three meetings between September, 1996 and March, 1997. The purpose of the FPLS workgroup is to provide consultation regarding the design, development, and regulatory requirements for the expanded FPLS. This group is comprised of representatives from State Child Support Agencies, State Employment Security Agencies, the Federal Office of Child Support Enforcement, the U.S. Department of Labor, the Social Security Administration, the Interstate Conference of State Employment Security Agencies, employer groups, payroll associations, and other interested individuals. The workgroup members provided information regarding quarterly wage and unemployment compensation claims reporting which was considered in developing these regulations.

#### **Description of Regulatory Provisions**

This rule implements the three new statutory wage and unemployment compensation claims reporting requirements by adding a new section, 45 CFR 303.108, "Quarterly Wage and Unemployment Compensations Claims Reporting to the National Directory of New Hires," to existing rules governing the child support enforcement program under Title IV-D of the Act. Although there are three separate reporting provisions, the information required to be reported is substantially the same for all three. Therefore, OCSE addresses the Secretary's responsibilities under all three provisions by a single regulation which permits the quarterly wage and unemployment compensation data required to be furnished under the three provisions to be supplied in a single, quarterly submission. Further, OCSE will consider the reporting requirements to have been satisfied if any one of the required reporting entities submits the information in accordance with the provisions of the regulation. OCSE intends to leave the decision as to which entity will report up to the individual States. Accordingly, the regulation refers to the "State" as the entity that must transmit data to the NDNH. However, if data is not reported as required under the proposed regulation, OCSE will hold the State Title IV-D agency accountable for the failure of the State Directory of New Hires to report as required under section 453A(g)(2)(B). Section 454(28) of the Act, as added by section 313(a) of PRWORA, added a new State plan requirement for Title IV-D agencies to operate a State Directory of New Hires

in accordance with section 453A of the Act. The failure to report as required pursuant to section 303(h) of the Act or section 3304(a)(16) of the Internal Revenue Code of 1986 may also result in actions being taken by the Secretary of Labor.

45 CFR 303.108(a) contains definitions designed to clarify quarterly wage and unemployment compensation claims reporting. Paragraph (a)(1) defines "Reporting period" as the time elapsed during a calendar quarter, e.g. January–March, April–June, July–September, October–December. "Wage information" is defined in paragraph (a)(2) as: (1) The name of the employee; (2) the employee's social security number; (3) aggregate wages of the employee during the reporting period; and (4) the name and address (and optionally, any second address for wage withholding purposes) and Federal employer identification number of the employer reporting wages. In the event that an individual is working more than one job, the State must transmit separate quarterly records containing the "wage information" for each job an individual has held. The information being included as wage information is the minimal amount of data needed to meet the purposes of the NDNH. OCSE is requesting data on the names of employees in order to meet the requirements of section 453(j)(1) of the Act, 42 U.S.C. 653(j)(1). Section 453(j)(1) requires the Secretary of Health and Human Services to transmit the information in the NDNH to the Social Security Administration to verify the accuracy of the name, social security number, and birth date of each individual. "Unemployment compensation or claim information" is defined in paragraph (a)(3) as: (1) Whether an individual is receiving, has received or has applied for unemployment compensation; (2) the individual's name and current (or most recent) home address; (3) the individual's social security number; and (4) the aggregate gross amount of compensation the claimant received during the reporting quarter.

Paragraph (b) of 45 CFR 303.108 contains the requirements for quarterly wage and unemployment compensation claims reporting. Under paragraph (b), the State is required to disclose quarterly, to the National Directory of New Hires, wage and claim information, as defined in paragraph (a), that is collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act. OCSE does not require the collection or reporting of any additional wage

information for purposes of the NDNH beyond that which is currently being collected. Wage and unemployment claim information is currently reported to agencies administering unemployment compensation laws under title III of the Act or to other agencies pursuant to section 1137(a) of the Act as part of the income and eligibility verification program, so paragraph (b) does not impose an additional information requirement. OCSE is also aware that some States' compensation records either do not include employee names or record only a partial set of the letters in the employee's name. Similarly, OCSE is aware that State unemployment compensation laws do not require all employers to report information. In the regulation, the State is only required to supply wage information which is already contained in the records of the State. Therefore, in the case of employee names or wages, a State is required to send us as much information on employee names or wages as exists in the unemployment compensation records, or in the records maintained for purposes of section 1137 of the Act if the information is maintained by another agency. The reference to section 1137 has been included to cover those situations where States have alternate data collection systems to make it clear that the data in such alternate systems is covered by the regulation.

Similarly, the State is only required to supply claim information which is already contained in the records of the State agency administering the unemployment compensation program or the records maintained for purposes of section 1137 of the Act. There is no requirement imposed to collect additional claim information for purposes of the NDNH. In addition, the State is only required to furnish the NDNH with claim information that is processed electronically. OCSE believes that it is neither feasible nor cost effective to require that States transmit claims data for those relatively few benefit programs which are processed manually. State Employment Security Agencies and the Department of Labor have indicated that manually processed claims comprise a very small portion of total claims. We understand that the unemployment compensation programs being administered by States cover any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law) and extended benefits, unemployment compensation for

Federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, and disaster unemployment assistance.

45 CFR 303.108(c) sets the time frames for quarterly wage and claims reporting. The State is required to report wage information for the reporting period no later than the end of the fourth month following the reporting period. States will be required to begin reporting on the first reporting date occurring after the final rule becomes effective. However, the NDNH will accept earlier reports, beginning with those for the July–September 1997 reporting period and States are encouraged to begin submitting reports as early as possible. Currently, State laws generally allow employers one month following the reporting period to report quarterly wages to the State agency administering the unemployment compensation program. We believe that the time frame for States to report wage information to the Secretary for the purposes of the NDNH will ensure that States have adequate time to enter, edit, and transmit wage information to the Secretary. Given the necessity and importance of maintaining accurate wage data in the NDNH, the schedule for reporting allows States ample time to work with employers to correct inaccurate wage reports and to submit complete and comprehensive wage information on employees within a State.

The State is required to report claim information for the reporting period no later than the end of the first month following the end of the reporting period. The State is required to begin the reporting of claim information on the first reporting date occurring after the final rule becomes effective. However, the NDNH will accept earlier reports, beginning with those for the October–December 1997 reporting period and States are encouraged to begin submitting reports as early as possible. We believe that a shorter time frame for submitting claim information, as opposed to wage information, is appropriate because the State agency charged with administering the unemployment compensation program maintains this data on an ongoing basis. Also, as noted above, the collection of wage information lags behind the collection of claim information because of the time required to ensure that wage information submitted is accurate.

In order to ensure the effective implementation of the NDNH, the Secretary planned a staggered schedule for initial data submissions to the NDNH. The reporting of new hire data began on October 1, 1997, to be

followed by initial quarterly wage and claims information submissions on January 31, 1998 or the first reporting date after the final rule becomes effective. For this reason, the Secretary will allow that the earliest claims information be submitted for the period beginning October–December, 1997, rather than July–September, 1997.

45 CFR 303.108(d) provides that the Secretary will establish standardized formats for reporting quarterly wage and claim information and that the States will be required to adhere to such formats for reporting purposes. The formats identify the data elements, descriptions and tape specifications for reporting quarterly wage and claim information. These formats were published in the **Federal Register** for comment on July 25, 1997 (62 FR 40092).

### Response to Comments

In response to the Notice of Proposed Rulemaking published October 7, 1997, in the **Federal Register** (62 FR 52306) we received thirteen comments from six commenters, representing State IV–D agencies, State Employment Security Agencies/State Departments of Labor and one Federal Agency. The comments and our responses are as follows:

1. *Comment:* One commenter stated that, under 45 CFR 303.108(b), there are large programming costs associated with submission of quarterly wage and unemployment insurance claim data because the information, while available in the State Department of Labor's records, is not all in one place or in the required formats for submission to the National Directory of New Hires. The commenter stated that the costs for the extraction, formatting and transmission of the data are not reimbursable from Unemployment Compensation grant money. Their recommendation is that there be reimbursement for all legitimate costs based on actual costs, not an arbitrary figure. Another commenter believes that this is an unfunded mandate because states are required to submit information "electronically." They believe that there is no provision for the costs associated with electronic submission.

*Response:* Section 453(g) of the Act states that "The Secretary may reimburse Federal and State agencies for the costs incurred by such entities in furnishing information requested by the Secretary under this section in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information)." OCSE is requesting

that States submit an itemized list of projected costs for extraction and transmission of the required data. These will consist of both initial costs for programming and ongoing costs for transmission. OCSE will then be able to respond specifically to requests for reimbursement, and is planning to reimburse States for reasonable direct costs for extraction, formatting and transmission. OCSE has also offered on-site technical assistance to complete the required programming, and has provided skeleton code programs to all the States in order to assist with the programming changes.

2. *Comment:* One commenter stated that the source for estimates of the burden on the States is not clearly presented and that the impact on the States in terms of hours spent is "grossly underestimated." The commenter stated that their start up burden is underestimated and that the annual reporting estimate "will not begin to cover the time necessary." They also said they have spent a great deal of time reviewing materials sent out by OCSE. A second commenter also took issue with the burden time estimates and pointed out that any time spent diverts resources from Year 2000 projects.

*Response:* The time estimates in the Rule are based on industry practices and on information from the Social Security Administration. Detailed estimates were presented in the Paperwork Reduction Act package approved as of November 26, 1997 (OMB control number 0970–0166.) There are burdens for start-up programming, but OCSE has tried to do everything possible to minimize these burdens; for instance by providing on-site technical assistance if requested and by providing on-going technical support by telephone, as well as skeleton code programs to assist with programming changes. The burden estimates are based on the assumption that once the program is in place, extraction and transmission of the data can be done on an almost entirely automated basis, requiring little or no human intervention. Materials sent out by OCSE were meant to reduce the burden on the states by answering commonly asked questions, giving further explanations of program requirements, and providing technical information and assistance.

3. *Comment:* The commenter states that there is ambiguity in the first paragraph of the *Description of Regulatory Provisions*. They indicate that the phrase "the three new statutory reporting requirements" might be interpreted to refer to New Hire, Quarterly Wage and Unemployment

Insurance. The commenter then points out that the rule only defines reporting requirements with respect to Quarterly Wage and Unemployment Insurance. The commenter's recommendation is that it be made more clear that this rule does not address New Hire reporting requirements. They also suggest that the Rule ought to indicate where New Hire reporting provisions are located.

*Response:* The phrase "the three new statutory reporting requirements" refers to the code sections cited in the first paragraph under *Statutory Authority*, all of which relate to Quarterly Wage and Unemployment Insurance reporting. It is understandable that this reference may be confusing, so we have added semi-colons between the three cites in that section. We have also revised the phrase to read "the three new statutory wage and unemployment claims reporting requirements". It is also made clear within the body of the commentary that Quarterly Wage and Unemployment Insurance reporting are the areas covered by the rule. As this rule relates only to Quarterly Wage and Unemployment Insurance, it is not appropriate to give a reference to a third program in the body of the rule.

4. *Comment:* Two commenters stated that, while it is clear from the description section, the rule itself is not sufficiently clear that the State is not required to collect additional information to fulfill the requirements of the rule. One commenter also wished to point out that OCSE does not have the authority to propose collection of additional information by State Employment Security Agencies. The recommendation is that the rule be clarified.

*Response:* We believe that 303.108(b) makes it clear that the States are to report information "that is collected pursuant to a State's unemployment compensation program." The rule does not call for a State to collect any additional information.

5. *Comment:* One commenter noted the differences in time frames between quarterly wage information and unemployment insurance information (four months after the end of the reporting quarter and one month after the end of the reporting quarter, respectively). The commenter stated that it is their understanding that this time does not imply that the States must undertake any new processing effort. A second commenter believes that four months is too long to allow for submission, and that the data will be stale after that amount of time.

*Response:* The key considerations in determining the time period for reporting quarterly wages were accuracy

and timeliness. Currently, State laws generally allow employers one month following the reporting period to report quarterly wages to the State agency administering the unemployment compensation program. The time period for reporting quarterly wages was determined so that States would have adequate time to input, extract, format and edit the information. Given the necessity and importance of maintaining accurate wage data in the NDNH, the schedule for reporting ensures that States have time to work with employers to correct inaccurate wage reports and to submit complete and comprehensive wage information on employees within a State. In response to the one comment that the time period is too long, it is important to remember that quarterly wage information exists for individuals who have been employed at the same job for a period of time. New hire reporting will provide States with data on newly-employed individuals within approximately a month or less from the date of hire (exact time depends on State law).

**6. Comment:** One commenter pointed out that while the State Departments of Labor are responsible for collecting and reporting this data, the child support agency is held accountable if the Department of Labor does not comply. The commenter pointed out that this may be beyond their control.

**Response:** Both agencies will be held accountable for failure to comply. The child support agency will be held accountable through the State Plan process. Under section 454(28) of the Act, the State Plan must provide for the operation of a State Directory of New Hires (SDNH). Section 453A(g)(2)(b) requires the SDNH to transmit quarterly wage and unemployment insurance information to the NDNH. Thus, the child support statute directly places the responsibility for reporting the necessary information on the SDNH. Failure to report could result in disapproval of the State Plan, and put federal funding of the State program at risk.

Similarly, section 3304(a)(16) of the Internal Revenue Code of 1986 contains requirements that must be included in State Unemployment Compensation laws for employers in the State to receive Federal Unemployment Tax credits. Section 316(g) of Public Law 104-193 amended section 3304(a)(16) of the Internal Revenue Code of 1986 to provide that the wage and unemployment compensation information contained in the records of the State agency administering that program shall be furnished to the

Secretary of Health and Human Services, in accordance with regulations promulgated by the Secretary, as may be necessary for the purposes of the NDNH under section 453(i)(1) of the Act. Thus, the State Employment Security Agency may lose its certification by the Secretary of Labor for failure to submit the required information.

The provision of quarterly wage and unemployment insurance information to the NDNH is anticipated to be a cooperative effort between two agencies; in some States the information will be provided by one agency and submitted by another. Both agencies will be held accountable.

**7. Comment:** One commenter pointed out that the rule does not address the fundamental issues of confidentiality and security of the data to be provided.

**Response:** Under section 453A(g)(2)(B) the Secretary of the Department of Health and Human Services is required to identify the dates, format, and data elements necessary for quarterly wage and unemployment compensation data. In coordination with the President's Regulatory Reinvention Initiative, OCSE's intent is only to regulate where required by statute, thus reducing the regulatory burden on states; therefore the rule only covers the required areas. However, OCSE is committed to the confidentiality and security of data under this program, and is required to guarantee its "integrity and security" under section 453(m) of the Act. Our security approach covers policies and procedures, computer and data transmission systems, physical access, and the integrity of the staff who have access to the data or systems.

Only authorized persons, as defined in Federal law, may request access to information in the NDNH. (See sections 453 and 463 of the Act.) In accordance with section 453(b)(2) of the Act, the security plan for the NDNH incorporates specific safeguards to prevent the disclosure of information in cases where domestic violence is indicated and disclosure could be harmful to the parent or child, or where disclosure would contravene national policy or security interests, or to protect the confidentiality of census data.

The NDNH is physically housed at the Social Security Administration's (SSA) National Computer Center (NCC) in Baltimore, MD. SSA takes extensive measures to ensure the physical and electronic security of its data processing facilities. SSA uses state of the art technology to restrict physical and electronic access to information, limiting it to personnel specifically authorized by OCSE and SSA and to

specific functions. New Hire, Quarterly Wage and Unemployment Insurance data are transmitted to the NDNH via several methods, including SSA's leased-line CONNECT:Direct network and transportable electronic media, such as cartridge tapes. While the measures vary according to the transmission method, OCSE and SSA have taken specific steps to ensure the security of data during transmission, including a clear chain of custody and secure locked storage for physical media.

The NCC is regularly reviewed and monitored by outside security auditors who report any concerns, violations or breaches in security to SSA's Security Officer. Staff who have access to sensitive data are assigned security level designations. In addition, all staff associated with the NDNH are required to undergo background checks. Staff sign non-disclosure agreements, and are subject to fines and imprisonment for misuse of data. (See 5 U.S.C. sec 552a(i) and 18 USC sec 1905.)

States are required by law to implement safeguards that are similar to those at SSA and OCSE under section 454A(d) of the Act. These are designed to protect the privacy rights of individuals, and prevent the unauthorized disclosure of information. State agencies and systems are audited, reviewed, or certified by a variety of Federal agencies including the Internal Revenue Service, Department of Labor, DHHS' Office of State Systems, and SSA. SSA and NDNH security plans fully document the approach summarized here.

**8. Comment:** One commenter stated that the rule fails to address the right to privacy of individuals whose information is to be disclosed, especially privacy of social security numbers.

**Response:** OCSE recognizes that the right to privacy is of the utmost importance, not only in regards to social security numbers, but for all the information that is to be reported to the expanded Federal Parent Locator Service. For that reason access to the information in the database is very strictly limited (see section 453(m) of the Act.) While it would be optimal if social security numbers did not need to be disclosed, it would not be possible to obtain the necessary accuracy of data without social security numbers. This is especially true because some States do not collect the individual's name at all for quarterly wage, so a social security number is the only identifier for the individual. The number is absolutely essential for the program to function, and every precaution is being taken to

be sure that the information is kept confidential.

9. *Comment:* One commenter stated that the definitions given are inconsistent with existing income eligibility and verification system data element definitions, and that any rules should be issued jointly with the Federal Department of Labor in order to ensure consistency.

*Response:* The definitions, while worded slightly differently and in slightly different order, are consistent with the definitions under the Income Eligibility Verification System. Any differences have more to do with the required reporting period than any difference in intent. If anything, the definitions given in this rule are more specific. For instance, this rule asks for "aggregate gross amount of compensation the claimant received during the reporting quarter" rather than "the amount of compensation the individual is receiving or entitled to receive." Under 453A(g)(2)(B) of the Act, the Secretary of the Department of Health and Human Services is required to issue the rule.

#### Paperwork Reduction Act of 1995

Sections 453A(g)(2)(B) and 303(h) of the Act and section 3304(a)(16) of the Internal Revenue Code of 1986 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), this request for approval of a new information collection has been approved by Office of Management and Budget as of November 26, 1997 under OMB control number 0970-0166.

Because all quarterly wage and unemployment compensation claims data will be reported from the State to the NDNH electronically and will be limited to data already being collected, the burden on the States will be minimal. The average burden per response is estimated to be 2 minutes (.03 hours). States may also have a one-time initial start-up burden of two weeks (80 hours) for reprogramming their systems to comply with Federal reporting requirements. The total annual reporting and recordkeeping burden that will result from the collection of information is estimated to be 7.13 hours.

#### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State

governments. State governments are not considered small entities under the Act.

#### Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. The rule implements the statutory provisions by specifying the wage and unemployment compensation claims information that must be reported to the Secretary of Health and Human Services.

#### Unfunded Mandates Act

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

The Department has determined that this rule would 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.

#### List of Subjects in 45 CFR Part 303

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

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

Dated: March 18, 1998.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: April 28, 1998.

**Donna E. Shalala,**

*Secretary, Department of Health Human Services.*

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

#### PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation 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), 1396(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. A new § 303.108 is added to read as follows:

#### § 303.108 Quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires.

(a) What definitions apply to quarterly wage and unemployment compensation claims reporting? When used in this section:

(1) *Reporting period* means time elapsed during a calendar quarter, e.g. January–March, April–June, July–September, October–December.

(2) *Wage information* means:

(i) The name of the employee;

(ii) The social security number of the employee;

(iii) The aggregate wages of the employee during the reporting period; and

(iv) The name, address (and optionally, any second address for wage withholding purposes), and Federal employer identification number of an employer reporting wages.

(3) *Unemployment compensation or claim information* means:

(i) Whether an individual is receiving, has received or has applied for unemployment compensation;

(ii) The individual's name and current (or most recent) home address;

(iii) The individual's social security number; and

(iv) The aggregate gross amount of compensation the claimant received during the reporting quarter.

(b) What data must be transmitted to the National Directory of New Hires?

The State shall disclose quarterly, to the National Directory of New Hires, wage and claim information as defined in paragraph (a) of this section that is collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act.

(c) What time frames apply for reporting quarterly wage and unemployment compensation claims data?

The State shall report wage information for the reporting period no later than the end of the fourth month following the reporting period. The State shall report claim information for the reporting period no later than the end of the first month following the reporting period.

(d) What reporting formats will be used for reporting data?

The State must use standardized formats established by the Secretary of Health and Human Services for reporting wage and claim information.

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