

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 309 and 310

RIN 0970-AC32

Computerized Tribal IV-D Systems and Office Automation

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule enables Tribes and Tribal organizations currently operating comprehensive Tribal Child Support Enforcement programs under Title IV-D of the Social Security Act (the Act) to apply for and receive direct Federal funding for the costs of automated data processing. This rule addresses the Secretary's commitment to provide instructions and guidance to Tribes and Tribal organizations on requirements for applying for, and upon approval, securing Federal Financial Participation (FFP) in the costs of installing, operating, maintaining, and enhancing automated data processing systems.

DATES: *Effective Date:* This rule is effective February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Paige Hausburg, OCSE Division of Policy, (202) 401-5635. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This final regulation is published under the authority granted to the Secretary (the Secretary) of the Department of Health and Human Services (the Department) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the Title IV-D program.

This rule also is published in accordance with section 455(f) of the Act (42 U.S.C. 655(f)). Section 455(f) of the Act authorizes the Secretary to issue regulations governing grants to Tribes and Tribal organizations operating child support enforcement programs.

Background

On March 30, 2004 the Tribal Child Support Enforcement Program final rule

was published in the **Federal Register** (69 FR 16638). We stated in our response to comments to the final rule (69 FR at 16652) that we had begun consideration with stakeholders of appropriate minimum Tribal systems automation specifications in anticipation of Tribal IV-D programs moving toward high-speed automated data processing. A Federal/Tribal workgroup was convened and considered such automation issues as compatibility, scale, functionality and costs, with a goal of developing a Model Tribal IV-D System, designed by the Office of Child Support Enforcement (OCSE) to allow comprehensive Tribal IV-D agencies to effectively and efficiently automate Tribal child support enforcement operations.

This regulation sets forth requirements for comprehensive Tribal IV-D programs that must be met in order for Tribes and Tribal organizations to receive direct funding under section 455(f) of the Act for automated data processing systems. This final regulation responds to public comments on the Notice of Proposed Rulemaking (NPRM) issued on June 11, 2008 (73 FR 33048).

Consultations/Public Comment Period on the Regulation

To facilitate the communication and consultation process between the Federal government and Tribal governments, OCSE held one public informational meeting and three consultation sessions regarding the proposed rule on Computerized Tribal IV-D Systems and Office Automation. The informational meeting was held on June 11, 2008, when the NRPM was published, and the consultation sessions were held on June 27, July 8, and July 9 of 2008. OCSE provided notice of open consultation regarding the proposed rule on Computerized Tribal IV-D Systems and Office Automation through informal and formal means. These included sending letters such as a Tribal Dear Colleague Letter (TDCL-08-01: <http://www.acf.hhs.gov/programs/cse/pol/TDCL/2008/tdcl-08-01.htm>) to all Tribal IV-D Directors dated May 7, 2008, and a second letter addressing all Tribal leaders dated June 4, 2008 as well as publication of a notice of open consultation in the **Federal Register** on June 10, 2008 (73 FR 32668). The informational meeting and consultations were successful in eliciting questions and concerns.

The government-to-government consultations were very useful in identifying key issues of Tribal concern including the Tribal consultation process, piloting the Model Tribal IV-D

System, access to Federal resources for support enforcement, increased Federal funding of Tribal automation and Federal access to Tribal systems. These issues are discussed in the Response to Comments section of this rule.

Changes Made in Response to Comments

We received 14 letters from 13 Tribal programs and one State, in addition to 12 comments from the participants in the three Tribal consultations on the NPRM. We made the following changes to the proposed regulation in response. We agreed with commenters' suggestion to increase FFP in the costs of installing the Model Tribal IV-D System to 90 percent matching of the pre-approved cost of installation by revising § 309.130(c)(3). We also agreed with commenters that a Tribal IV-D agency seeking FFP in the operation and maintenance costs of a Tribally-funded system as described in § 309.145(h)(5) should not be subject to all the license requirements in § 310.25(c). Accordingly, we revised § 309.145(h)(5) by narrowing the Software and Ownership Rights reference from § 310.25(c) as stated in the NPRM to § 310.25(c)(1) in this final rule. Under § 310.25(c)(1), a Tribal IV-D agency seeking FFP in operation and maintenance costs must ensure that all procurement and contract instruments include a clause that provides that the comprehensive Tribal IV-D agency will have all ownership rights to the Computerized Tribal IV-D System software or enhancements. The final rule does not require a Tribal IV-D agency to follow the licensing requirements in § 310.25(c)(2) as a condition of receiving FFP in the costs of operation and maintenance of a Tribally-funded system. In addition, a technical change was made to § 310.15(a) to clarify which safeguarding requirements a Tribal IV-D agency must include in written policies and procedures. These changes are discussed in more detail under the Response to Comments section of this preamble.

Provisions of the Regulation

Part 309—Tribal Child Support Enforcement (IV-D) Program

Section 309.130 How will Tribal IV-D programs be funded and what forms are required?

This regulation revises paragraph (c) of § 309.130 by referencing the Federal share of pre-approved installation costs for the Model Tribal IV-D System. As indicated earlier, in response to comments suggesting that FFP in the

costs of Tribal automation be increased from the applicable matching rate as defined in § 309.130(c), we have added subparagraphs (i) and (ii) to § 309.130(c)(3) of the final rule. Section 309.130(c)(3)(i) provides that for all periods following the three-year period (a timeframe under which a Tribal IV-D agency may receive 90 percent Federal funding as specified in paragraph (c)(2)), a Tribe or Tribal organization will receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures made for the administration of the Tribal child support enforcement program, except as provided in paragraph (ii). Under § 309.130(c)(3)(ii), a Tribe or Tribal organization will receive Federal grant funds equal to 90 percent of pre-approved costs of installing the Model Tribal IV-D System. The comments requesting increased Federal funding for Tribal automation and changes to the applicable matching rate are discussed in more detail in the Response to Comments section.

Section 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?

Under § 309.145, Federal funds are available for the costs of operating a Tribal IV-D program under an approved Tribal IV-D application carried out under § 309.65(a), provided that such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. Allowable activities and costs for Tribal automated data processing computer systems, addressed in paragraph (h) of this section, include planning efforts in the identification, evaluation, and selection of an automated data processing computer system solution meeting the program requirements defined in a Tribal IV-D plan and the automated systems requirements in part 310; installation, operation, maintenance and enhancement of a Model Tribal IV-D System as defined in and meeting the requirements of part 310; procurement, installation, operation and maintenance of essential Office Automation capability; establishment of Intergovernmental Service Agreements with a State and another comprehensive Tribal IV-D agency for access to the State or other Tribe's existing automated data processing computer system to support Tribal IV-D program operations, and reasonable costs associated with use of such a system; operation and maintenance of a Tribal automated data processing system funded entirely with Tribal funds if the

software ownership rights and license requirements in § 310.25(c)(1) are met; and other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

Part 310—Computerized Tribal IV-D Systems and Office Automation

Section 310.0 What does this part cover?

This section addresses the conditions for Federal funding and requirements governing Computerized Tribal IV-D Systems and Office Automation. These include the automated systems options for comprehensive Tribal IV-D programs; the functional requirements for the Model Tribal IV-D System; the security and privacy requirements for Computerized Tribal IV-D Systems and Office Automation; the conditions for funding the installation, operation, maintenance, and enhancement of Computerized Tribal IV-D Systems and Office Automation; the conditions that apply to acquisitions of Computerized Tribal IV-D Systems; and the accountability and monitoring of Computerized Tribal IV-D Systems.

Section 310.1 What definitions apply to this part?

Section 310.1(a) defines the following terms used in Part 310: Automated Data Processing Services (ADP Services); Comprehensive Tribal IV-D Agency; Computerized Tribal IV-D System; Installation; Maintenance; Model Tribal IV-D System; Office Automation; Reasonable Cost; Service Agreement; and Simplified Acquisition Threshold.

Section 310.1(b) references the following terms defined in 45 CFR 95.605, *General Administration—Grant Programs*, and applies these terms to Part 310: Acquisition; Advance Planning Document (APD); Automated Data Processing (ADP); Design or System Design; Development; Enhancement; Federal Financial Participation (FFP); Operation; Project; Software; and Total Acquisition Cost. These terms are the terms in Part 95 that are appropriately applicable to Tribal IV-D programs and will ensure that a reasonably consistent approach will be maintained among State, Local and Tribal grantees with regard to ADP systems acquisitions, while still maintaining flexibility for Tribes and Tribal organizations to determine their own best solution to automating their comprehensive Tribal IV-D programs.

Section § 310.1(c) cross-references all definitions of terms that apply to Tribal IV-D programs in § 309.05 because these terms are also applicable in Part

310. Similarly, the definitions in this rule should apply to Part 309.

Subpart B—Requirements for Computerized Tribal IV-D Systems

Section 310.5 What options are available for Computerized Tribal IV-D Systems and Office Automation?

This section of the rule sets forth options available to comprehensive Tribal IV-D agencies for the purpose of automating Tribal IV-D activities. We recognize the importance and benefits of integrating automation in the daily operations of comprehensive Tribal IV-D programs. To that end, § 310.5(a) allows a comprehensive Tribal IV-D agency to have in effect an operational computerized support enforcement system that meets Federal requirements under Part 310.

Section 310.5(b) requires that a Computerized Tribal IV-D System must be one of the design options discussed in paragraphs (b)(1) and (b)(2). This provision would not preclude a Tribe from proposing a hybrid solution as long as the functional components are not duplicative or unreasonable in cost. In addition, OCSE recognizes that there may be situations wherein multiple systems may be in use during a reasonable transition period from one automated system to another. Under paragraph (b)(1), a comprehensive Tribal IV-D program may automate its case processing and record-keeping processes through installation, operation, maintenance, or enhancement of the Model Tribal IV-D System designed by OCSE to address the program requirements defined in a Tribal IV-D plan in accordance with § 309.65(a) and the functional requirements in proposed § 310.10.

Under § 310.5(b)(2), a comprehensive Tribal IV-D program may elect to automate its case processing and record-keeping processes through the establishment of Intergovernmental Service Agreements with a State or another comprehensive Tribal IV-D agency for access to that agency's existing automated data processing computer system to support comprehensive Tribal IV-D program operations.

In § 310.5(c), a comprehensive Tribal IV-D agency may opt to conduct automated data processing and record-keeping activities through Office Automation. Allowable activities under this paragraph include procurement, installation, operation and maintenance of essential Office Automation capability as defined in § 310.1.

In full recognition of Tribal sovereignty, § 310.5(d) affirms that a

comprehensive Tribal IV-D agency may design, develop, procure, or enhance an automated data processing system funded entirely with Tribal funds. An automated data processing system funded entirely with Tribal funds would not be obligated to meet the requirements detailed in this rule, although a comprehensive Tribal IV-D agency may adopt all or some of the system specifications laid-out in this rule in order to facilitate as much consistency in State and comprehensive Tribal IV-D automated data processing systems as possible.

Section 310.10 What are the functional requirements for the Model Tribal IV-D System?

Section 310.10 identifies the minimum functional requirements which a comprehensive Tribal IV-D agency must meet in the operation of a Model Tribal IV-D System. Comprehensive Tribal IV-D agencies that have elected to automate case processing and recordkeeping activities through a manner other than the Model Tribal IV-D System, as defined in § 310.1, will not be subject to the requirements presented in this section of the rule. All comprehensive Tribal IV-D agencies, regardless of automation choice, will continue to be responsible for meeting the programmatic requirements found in Part 309 titled *Tribal Child Support Enforcement (IV-D) Program*.

The system requirements discussed in this section are based on the functional requirements for computerized support enforcement systems regulated in §§ 307.10 and 307.11 for State IV-D programs. Determination of which functional requirements are mandatory in a Model Tribal IV-D System was based on careful examination of State automated systems, Tribal IV-D program regulations, and cost-effectiveness analyses, as well as strong consideration of which comprehensive Tribal IV-D activities would benefit most from automation, given the varying sizes of eligible Tribes and Tribal organizations.

Under § 310.10(a), a Model Tribal IV-D System must accept, maintain and process the actions in the child support collection and paternity determination processes under the Tribal IV-D plan, including identifying information; verifying information; maintaining information; and maintaining data. These are essential elements of automated case processing which are necessary to meet the fundamental objectives of the Tribal Child Support Enforcement program, including establishing paternity, establishing and

enforcing support orders, and collecting child support payments.

Under paragraph (b), a Model Tribal IV-D System must update, maintain and manage all IV-D cases under the Tribal IV-D plan from initial application or referral through collection and enforcement including any events, transactions, or actions taken therein. This requirement is especially critical in relation to Subpart D, § 310.40 which addresses accountability and monitoring procedures for Computerized Tribal IV-D Systems.

Section 310.10(c) requires a Model Tribal IV-D System to record and report any fees collected, either directly or by interfacing with State or Tribal financial management and expenditure information. The Model Tribal IV-D System must have the capacity to record and report costs of any fees collected to help ensure accurate and complete accounting of expenditures under a Tribal IV-D program that are funded in part with Federal funds.

Paragraph (d) requires that a Model Tribal IV-D System must have minimum system specifications which allow for the distribution of current support and arrearage collections in accordance with Federal regulations at § 309.115 and Tribal laws. We consider distribution of collected child support payments to be one of the comprehensive Tribal IV-D activities that would benefit most from automation. Automated distribution of collections would ensure families receive the support owed to them and minimize the need for manual processing of child support payments, which can be a time-consuming and burdensome task for comprehensive Tribal IV-D programs. Additionally, automated distribution of collections would facilitate more efficient and cost-effective communications in intra-tribal and intergovernmental case processing.

Under paragraph (e)(1), the Model Tribal IV-D System must maintain, process and monitor accounts receivable on all amounts owed, collected, and distributed with regard to detailed payment histories that include the amount of each payment, date of each collection, method of payment, distribution of payments and date of each disbursement. Under paragraph (e)(2), the Model Tribal IV-D System must have the capacity to perform automated income withholding activities including recording and maintaining information on payment default, generating the Standard Federal Income Withholding Form and allocating amounts received by income withholding according to §§ 309.110 and 309.115, which respectively cover

procedures governing income withholding and distribution of child support collections as specified in each Tribal IV-D plan.

Section § 310.10(f) requires that a Model Tribal IV-D System maintain and automatically generate data necessary to meet Federal reporting requirements on a timely basis as prescribed by OCSE. At a minimum this includes (1) yearly notices on support collected, which are itemized by month of collection and provided to families receiving services under the comprehensive Tribal IV-D program as required in § 309.75(c), to all case participants regarding support collections; and (2) reports submitted to OCSE for program monitoring and program performance as required in § 309.170. Without the proposed Model Tribal IV-D System, comprehensive Tribal IV-D agencies would rely on manual systems or Office Automation to manage the Federal reporting requirements and payment records which require meticulous attention to detail.

Under paragraph (g), a Model Tribal IV-D System will be required to provide automated processes to enable OCSE to monitor Tribal IV-D program operations and to assess program performance through the audit of financial and statistical data maintained by the system. This requirement is especially critical in relation to Subpart D, § 310.40 which addresses accountability and monitoring procedures for Computerized Tribal IV-D Systems.

In paragraph (h), the Model Tribal IV-D System must provide security to prevent unauthorized access to, or use of, the data in the system as detailed in § 310.15 discussed below. This requirement is necessary because comprehensive Tribal IV-D agencies may receive sensitive, personal information from Federal, State, or Tribal locate sources in intergovernmental cases or from parents seeking the Tribal IV-D program's assistance in securing support for children. This requirement compliments existing safeguarding requirements in § 309.80, *What safeguarding procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?* which applies to all comprehensive Tribal IV-D agencies. Federal, State and Tribal programs are entrusted with personal information critical to accomplish program goals and it is imperative that personal data be safeguarded to ensure privacy and maintain the public trust. We also would emphasize that no Federal Tribal IV-D program requirement obligates comprehensive Tribal IV-D agencies to disclose, or otherwise make accessible, their Tribal

enrollment records for the purposes of providing child support enforcement services or automating child support enforcement activities.

Section 310.15 What are the safeguards and processes that comprehensive Tribal IV-D agencies must have in place to ensure the security and privacy of Computerized Tribal IV-D Systems and Office Automation?

This section details the safeguarding requirements that a comprehensive Tribal IV-D agency, which is using a Computerized Tribal IV-D System or Office Automation, must have in place to ensure the security and confidentiality of information accessible through Federal, State, and Tribal sources. This section is taken from § 307.13 which addresses security and confidentiality for State computerized support enforcement systems and is revised to apply to automation for comprehensive Tribal IV-D programs. A comprehensive Tribal IV-D agency must also follow the safeguarding requirements under the Tribal Child Support Enforcement (IV-D) program rule found in § 309.80.

Under paragraph (a) of this section, the comprehensive Tribal IV-D agency must safeguard the integrity, accuracy, completeness, access to, and use of data in the Computerized Tribal IV-D System and Office Automation. The Tribal IV-D agency should ensure that the Computerized Tribal IV-D Systems and Office Automation comply with the requirements of the Federal Information Security Management Act and the Privacy Act. These safeguards must include written policies and procedures concerning: (1) Periodic evaluations of the system for risk of security and privacy breaches; (2) procedures to allow Tribal IV-D personnel controlled access and use of IV-D data including (i) specifying the data which may be used for particular IV-D program purposes and the personnel permitted access to such data and (ii) permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV-A, IV-E and XIX of the Act to the extent necessary to carry out the comprehensive Tribal IV-D agency's responsibilities with respect to such programs; (3) maintenance and control of application software program data; (4) mechanisms to back-up and otherwise protect hardware, software, documents, and other communications; and (5) mechanisms to report breaches or suspected breaches of personally identifiable information to the

Department of Homeland Security and respond. We added the phrase "or suspected breaches" to the regulatory language in paragraph (a)(5) of this section for clarification and consistency with the preamble language. We also note that in response to comments that the introductory language in § 310.15(a) needed clarification as to which safeguarding requirements must be included in written policies and procedures, we replaced 'some of the required safeguards' with 'the required safeguards' for clarity.

Paragraph (b) requires that the comprehensive Tribal IV-D agency monitor routine access to and use of the Computerized Tribal IV-D System and Office Automation through methods such as audit trails and feedback mechanisms to guard against, and promptly identify, unauthorized access or use. This safeguard is consistent with the security and privacy measures required in the State computerized support enforcement systems found in § 307.13 and is an appropriate aspect of information security.

Section 310.15(c) requires a comprehensive Tribal IV-D agency to have procedures to ensure that all personnel, including Tribal IV-D staff and contractors, who may have access to or be required to use confidential program data in the Computerized Tribal IV-D System and Office Automation are adequately trained in security procedures. This safeguarding requirement is consistent with the security and privacy measures required in the State computerized support enforcement systems in § 307.13 and is equally critical to Tribal automated systems. Staff members and contractors of comprehensive Tribal IV-D agencies using the Computerized Tribal IV-D System or Office Automation should demonstrate knowledge of strategies that would ensure the security and privacy of sensitive information.

In paragraph (d) of this section, the comprehensive Tribal IV-D agency must have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information. This aspect of the security and privacy safeguarding requirements reflects our position that security and privacy of child support enforcement-related information is paramount to the integrity of the system.

Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation

Section 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation?

This section of the rule establishes conditions that must be met in order for a comprehensive Tribal IV-D agency to obtain Federal funding in the costs of installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation. This section is derived from §§ 307.15 and 307.20, governing State automated systems, and is appropriately revised to specifically apply to the needs of comprehensive Tribal IV-D programs. Sections 307.15 and 307.20, respectively, address conditions for approval of Advance Planning Documents (APD) and submittal of APDs for State computerized support enforcement systems. Section 310.20 addresses procedures for submittal of an APD to the Department. OCSE uses the APD process to help meet its fiduciary responsibility to ensure that the costs associated with all automated data processing systems acquisitions, including Computerized Tribal IV-D Systems, are reasonable and necessary. Just as OCSE requires States to request funding in an APD for acquisition of a computerized child support enforcement system, documenting such factors as project cost, risk, resources, and schedule, those same factors equally apply to OCSE's review and approval of the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems. For this reason, the APD process is incorporated into this rule as applicable and necessary to acquisitions of such systems in comprehensive Tribal IV-D programs.

Section 310.20(a) lays out conditions that must be met for 90 percent FFP in the costs of installation of the Model Tribal IV-D System and 80 or 90 percent FFP (referred to as the applicable matching rate), as appropriate, in the costs of operation, maintenance, and enhancement of a Computerized Tribal IV-D System. The applicable matching rate as defined in § 309.130(c) refers to the total amount of approved and allowable expenditures for which a comprehensive Tribal IV-D program would be eligible to receive Federal grant funds in the costs of administering the Tribal IV-D program, including Computerized Tribal IV-D Systems and Office Automation. Except for the costs of installation of the Model

Tribal IV–D System described below, the applicable matching rate would be 90 percent for comprehensive Tribal IV–D programs that are operating within the first three-year period of Federal funding, and the applicable matching rate would be 80 percent for comprehensive Tribal IV–D programs operating in all periods following the first three-year period. As previously mentioned, paragraph § 310.20(a) was revised in response to comments to reference 90 percent FFP for the pre-approved costs of installation of the Model Tribal IV–D System under § 309.130(c). This change is discussed in more detail under the Response to Comments section of the preamble.

Paragraph (a)(1) states that a comprehensive Tribal IV–D agency must have submitted, and OCSE must have approved, an APD for the installation and enhancement of a Computerized Tribal IV–D System. Under paragraph (a)(2), an APD for installation of a Computerized Tribal IV–D System must: (i) Represent the sole systems effort being undertaken by the comprehensive Tribal IV–D agency under part 310; (ii) describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements; (iii) contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and complexity of the initial implementation project; (iv) contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV–D System; and (v) contain a statement that the comprehensive Tribal IV–D agency agrees in writing to use the Computerized Tribal IV–D System for a minimum period of time. This last requirement, to agree in writing to use the Computerized Tribal IV–D System for a minimum period of time, is derived from 45 CFR 95.619. Under § 95.619, automated data processing systems designed, developed, or installed with FFP shall be used for a period of time specified in the APD, unless the Department determines that a shorter period is justified. The requirement for the APD to contain an agreement by a Tribal IV–D program to use the Computerized Tribal IV–D System for a minimum period of time assures both the Federal and Tribal governments of a reasonable return on investment relative to the Total Acquisition Cost of the Computerized Tribal IV–D System.

In addition to the above requirements, paragraph (a)(3) includes the following conditions which must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV–D program's ADP system established under an Intergovernmental Service Agreement. The comprehensive Tribal IV–D agency must, under paragraph (i), maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review. Under paragraph (ii), the comprehensive Tribal IV–D agency must ensure that: (A) The Service Agreement for which FFP is being sought meets the definition of a Service Agreement as defined in § 310.1; (B) claims for FFP conform to the timely claim provisions of 45 CFR Part 95, Subpart A; and (C) the Service Agreement was not previously disapproved by the Department. In deriving from 45 CFR Part 95, Subpart A, the requirements to be met to obtain FFP in the cost of access to another State or Tribal IV–D program's ADP system, we are ensuring a common understanding and consistency of approach to securing, documenting and maintaining FFP approval of such intergovernmental cooperative agreements.

Under paragraph (a)(4), the following conditions must be met in order for a comprehensive Tribal IV–D agency to obtain FFP in the costs of enhancements to its Computerized Tribal IV–D System: (i) the project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV–D agency's total Tribal IV–D program grant award for the year in which the acquisition request is made; and (ii) the APD budget, schedule and commitment to use the Computerized Tribal IV–D System for a specified minimum period of time must be updated to reflect the enhancement project. These additional APD requirements to obtain FFP in the cost of enhancements to an existing Computerized Tribal IV–D System reflect the need to ensure both continued cost reasonableness and ongoing return on investment given a Computerized Tribal IV–D System's increased Total Acquisition Cost.

Paragraph (a)(5) requires that to receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV–D System installed under § 310.20 or developed under § 309.145(h)(5), which refers to a Tribal automated data processing system that is funded entirely with Tribal funds, the comprehensive Tribal IV–D agency must include operation and maintenance costs in its annual Title IV–D program budget submission in accordance with

§ 309.15(c) wherein requirements for annual budget submissions are detailed.

In addition, paragraph (a)(6) requires that in order to receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV–D agency must include such costs in its annual Title IV–D program budget submission in accordance with § 309.15(c). Currently, States maintaining their computerized IV–D systems in an operation and maintenance-only mode may close their APD and thereafter request FFP for their operation and maintenance costs through specific line-item submissions in their "Quarterly Report of Expenditures and Estimates," (OCSE Form 396A). Given the efficacy of this existing procedure used with States, and the predictability and general reasonableness of such costs, a similar process for Tribes to request FFP for operation and maintenance cost reimbursement is appropriate. Therefore, this rule allows Tribes to request FFP in the costs of installation, operation, and maintenance of essential Office Automation capabilities, an inherently operational activity, through a comprehensive Tribal IV–D agency's Title IV–D program budget submission, "Budget Information—Non-Construction Programs," (OCSE Form SF 424A) in accordance with requirements listed at § 309.15(c).

The graduated variation in conditions that must be met in order to obtain FFP in the costs of the activities under paragraph (a) are designed to reflect the varying automation levels of comprehensive Tribal IV–D agencies. For example, the conditions that a comprehensive Tribal IV–D agency will be required to meet in order to obtain FFP in the costs of installing Office Automation would be less involved than the conditions required for a comprehensive Tribal IV–D agency that is requesting FFP in the installation costs of accessing a State or another comprehensive Tribal IV–D program's ADP system. Section § 310.20 provides comprehensive Tribal IV–D agencies with the flexibility to determine which automation approaches and application procedures best suit the program-specific needs of that Tribe or Tribal organization. The provisions in § 310.20 are consistent with Tribal IV–D program staff input to reduce the burden of the APD application process.

Provisions under § 310.20(b) describe the required procedures for submittal of an APD. Paragraph (b) states that the comprehensive Tribal IV–D agency must submit an APD for a Computerized Tribal IV–D System to the

Commissioner of OCSE, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV–D agency must be approved and signed by the comprehensive Tribal IV–D agency Director and the appropriate Tribal officials prior to submission to OCSE for approval. The above procedures for submitting an APD would ensure that the proper authorities representing the Tribe or Tribal organization agree with the details in the APD application documents and that the Program Director and appropriate Tribal officials are aware of the responsibilities in acquiring automation for the Tribal IV–D program.

Section 310.25 What conditions apply to acquisitions of Computerized Tribal IV–D Systems?

This section details specific conditions that must be met in the acquisition process of Computerized Tribal IV–D Systems. This section is derived from and comparable to § 307.31 and 45 CFR 95.617 which are respectively titled *FFP at the 80 Percent Rate for Computerized [State] Support Enforcement Systems and Software and Ownership Rights*. This section applies to Comprehensive Tribal IV–D agencies that have elected to automate program activities through the Model Tribal IV–D System or Intergovernmental Service Agreements. It does not apply to Comprehensive Tribal IV–D agencies that have elected to automate program activities through Office Automation or another alternative to Computerized Tribal IV–D Systems as discussed in § 310.5.

In paragraph (a), *APD Approval*, a comprehensive Tribal IV–D agency must have an approved APD in accordance with the applicable requirements of § 310.20 prior to initiating acquisition of a Computerized Tribal IV–D System. This requirement safeguards all parties involved by ensuring that authorities from the Tribe or Tribal organization and the Department are in agreement about the use, funding, and parameters of each comprehensive Tribal IV–D agency's specific plan for automating case-processing and record-keeping program activities.

Under § 310.25(b), *Procurements*, Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to OCSE for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will exceed the Simplified Acquisition Threshold. The Simplified Acquisition

Threshold for ADP systems, equipment, and service acquisitions is defined in § 310.1(a)(10) as a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less. The Simplified Acquisition Threshold represents the maximum amount of monies that a comprehensive Tribal IV–D agency may expend without submitting the subject solicitation document (RFP, etc.) and resultant contract to OCSE for review and written approval prior to its execution. As previously stated in this rule, the Simplified Acquisition Threshold is derived from 45 CFR 92.36(d)(1), which references *small purchase procedures* as a procurement method for securing items of cost not exceeding the Simplified Acquisition Threshold fixed at 41 U.S.C. 403(11) (currently \$100,000). This is appropriately adapted for this rule because of the need to ensure full and open competition in acquisitions in accordance with 45 CFR 92.36(c), and to ensure consistency with regulations at 45 CFR 95.611(b) governing State ADP acquisitions funded at enhanced FFP rates of reimbursement.

Section 310.25(c) is titled *Software and Ownership Rights*. Under paragraph (c)(1) all procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV–D agency will have all ownership rights to Computerized Tribal IV–D System software or enhancements thereof and all associated documentation designed, developed, or installed with FFP. Intergovernmental Service Agreements are not subject to this requirement. The exception for Intergovernmental Service Agreements ensures consistent application of current policy among all grantees, State and Tribal, and is derived from current Federal regulations at 45 CFR 95.613(b) that exempt Service Agreements from the procurement standards applicable to State acquisitions of ADP equipment and services. Paragraph (c)(2) states that OCSE reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications and documentation developed under this part. Under paragraph (c)(3) FFP is not available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV–D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased

to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement. These requirements are not unique to Child Support Enforcement regulations. Rather, these requirements are a restatement of current Departmental regulations that apply to all automated systems acquisitions. Federal policy in this area, as stated in Federal regulations at 45 CFR 92.34 and 95.617, and as restated in child support automation regulations for State IV–D programs at 45 CFR 307.30 and 45 CFR 307.31, best protects Federal interest in IV–D and other Federal systems development efforts.

Under paragraph (d) of this section, *Requirements for acquisitions under the threshold amount*, a comprehensive Tribal IV–D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions under the Simplified Acquisition Threshold, unless specifically requested to do so in writing by OCSE.

Section 310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV–D Systems?

This section of the rule identifies circumstances under which OCSE would suspend or disallow FFP in the costs of Computerized Tribal IV–D Systems. The content of this section is derived from § 307.40, which is titled *Suspension of Approval of Advance Planning Documents for Computerized Support Enforcement Systems*, and addresses suspension and disallowance of FFP in the costs of State computerized child support enforcement systems. This section applies to comprehensive Tribal IV–D agencies that have elected to automate program activities through the Model Tribal IV–D System or Intergovernmental Service Agreements. It does not apply to Office Automation enhancements or another alternative to Computerized Tribal IV–D Systems as discussed in § 310.5.

Paragraph (a) of this section, *Suspension of APD approval*, states that OCSE will suspend approval of the APD for a Computerized Tribal IV–D System approved under Part 310 as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions of the APD. OCSE will notify a Tribal IV–D agency in writing of a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance. The intent of OCSE is to minimize the likelihood of suspension of a

comprehensive Tribal IV–D agency's APD by engaging in supportive efforts such as technical assistance, policy guidance, and on-going communication and collaboration between the comprehensive Tribal IV–D agency and OCSE. Such preventive efforts will likely facilitate early identification of difficulties associated with a Computerized Tribal IV–D System and the corresponding APD and thereby assist OCSE and the comprehensive Tribal IV–D agency in taking appropriate corrective action, before more serious measures, such as suspension of funding, become necessary.

Paragraph (b), *Suspension of FFP*, states that if OCSE suspends approval of an APD in accordance with Part 310 during the installation, operation, or enhancement of a Computerized Tribal IV–D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date OCSE determines that the comprehensive Tribal IV–D agency has taken the actions specified in the notice of suspension described in paragraph (a). OCSE will notify the comprehensive Tribal IV–D agency in writing upon making such a determination. This provision ensures that Federal funding is managed and distributed in the most productive, efficient and cost-effective manner possible, and that OCSE has the means necessary to enforce its fiduciary responsibilities.

Section 310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV–D Systems?

Under this section, emergency FFP in the costs of Computerized Tribal IV–D Systems and Office Automation would be available for qualifying circumstances. This section is similar to 45 CFR 95.624, which is titled *Consideration for FFP in Emergency Situations* and which lays out procedures that must be followed in applying for emergency FFP.

Under § 310.35(a), *Conditions that must be met for emergency FFP*, OCSE will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV–D agency. In order for OCSE to consider waiving the approval requirements in § 310.25 the comprehensive Tribal IV–D agency must submit a written request to OCSE prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include: (i) A brief description of

the ADP equipment and/or services to be acquired and an estimate of their costs; (ii) a brief description of the circumstances which resulted in the comprehensive Tribal IV–D agency's need to proceed prior to obtaining approval from OCSE; and (iii) a description of the harm that will be caused if the comprehensive Tribal IV–D agency does not acquire immediately the ADP equipment and services.

Under paragraph (a)(2), upon receipt of the information, OCSE will, within 14 working days of receipt, take one of the following actions: (i) Inform the comprehensive Tribal IV–D agency in writing that the request has been disapproved and the reason for disapproval; or (ii) inform the comprehensive Tribal IV–D agency in writing that OCSE recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) the comprehensive Tribal IV–D agency must submit a formal request for approval which includes the information specified at § 310.25 in order for the ADP equipment or services acquisition to be considered for OCSE's approval.

Paragraph (b) of this section, *Effective date of emergency FFP*, states that if OCSE approves the request submitted under paragraph (a)(2), FFP will be available from the date the comprehensive Tribal IV–D agency acquires the ADP equipment and services.

Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV–D Systems

Section 310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?

Section 310.40 identifies requirements that would facilitate accountability and monitoring procedures of Computerized Tribal IV–D Systems and Office Automation, including accessing systems and records. This section of the rule is derived from 45 CFR 95.615, *Access to Systems and Records*, and addresses the Department's right to access State computerized support enforcement systems for the purposes of monitoring the conditions for approval, as well as the efficiency, economy and effectiveness of the State's automated system.

Under § 310.40 a comprehensive Tribal IV–D agency must allow OCSE access to the system in all of its aspects, including installation, operation, and cost records of contractors and

subcontractors, and of Service Agreements at such intervals as are deemed necessary by OCSE to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost.

Response to Comments

Comments were received from 13 Tribes and Tribal organizations, 1 State and the participants of three consultation sessions. A discussion of the comments received and our responses follows:

General Comments

1. Comment: Three Tribal commenters stated that delaying this rule and release of the Model Tribal IV–D System would harm Tribes' progress.

Response: We recognized from the initial consultations on the Tribal IV–D program that for Comprehensive Tribal IV–D programs, automation would eventually become necessary to accurately and efficiently process child support collections. However, Tribes would need adequate time to develop their IV–D programs and to determine appropriate approaches, levels of automation, and processes for delivering services before adequate information would be available to design a state-of-the-art, culturally-appropriate automated system. We convened a Joint Federal/Tribal Workgroup (the Workgroup) and conducted market research, a feasibility study and the development of the Model Tribal IV–D System. We believe, based on our extensive consultation and work with Tribes over the past eight years, that publication of this final rule and making the Model Tribal IV–D System available to comprehensive Tribal IV–D programs is appropriate and timely.

2. Comment: Five Tribal commenters requested that this rule be withdrawn because they believe OCSE did not comply with HHS Tribal consultation policy and offered to assist OCSE in better implementing Tribal consultation. Another seven commenters asserted that OCSE should better adhere to its own Tribal consultation policy, but did not request that this rule be withdrawn. One Tribal commenter stated that the consultation process was circumvented and should be addressed for future regulations and stressed that it is important to expedite release of the Model Tribal IV–D System.

Response: OCSE followed Departmental policy on Tribal consultation. Three consultation sessions were held on June 27, July 8, and July 9 of 2008 as well as an

informational meeting at the National Tribal Child Support Association conference on June 11, 2008. The input we received from the consultation sessions and other collaborative efforts helped to shape the final rule.

3. *Comment:* Five Tribal commenters suggested that OCSE should proceed with pilot testing of the Model Tribal IV-D System so that Tribes will be able to assess whether it meets Tribal program needs. Six other Tribal commenters suggested that OCSE should proceed with the Model Tribal IV-D System pilot regardless of whether this final rule is published. Five Tribal commenters recommended that OCSE select at least three pilot sites and consult Tribes in the criteria for selection.

Response: In response to comments, OCSE issued a Dear Colleague Letter (DCL-08-47: <http://www.acf.hhs.gov/programs/cse/pol/DCL/2008/dcl-08-47.htm>) to solicit interest in piloting the Model Tribal IV-D System from comprehensive Tribal IV-D programs. Based on the selection criteria outlined in the Dear Colleague Letter, OCSE selected Forest County Potawatomi as the pilot site. The pilot phase, once initiated, is expected to last two to three months. OCSE will provide training, technical assistance, operational oversight, and support during this critical testing process. Due to limited resources, additional pilots were not possible.

Subpart A—General Provisions

Section 310.0 What does this Part cover?

1. *Comment:* Six Tribal commenters and one State requested that the scope of the regulation be expanded to include Tribes and Tribal organizations funded under start-up funding as specified in § 309.65(b) of this chapter, *What must a Tribe or Tribal organization include in a Tribal IV-D plan in order to demonstrate capacity to operate a Tribal IV-D program?*

Response: We do not agree that it is appropriate to expand the scope of this regulation to include Tribal IV-D programs in the start-up phase. Automated data processing is intended for comprehensive Tribal IV-D programs performing actions in the child support collection and paternity determination processes under the Tribal IV-D plan. Tribes receiving start-up funding are in the planning phase of developing an operational Tribal IV-D program and do not have adequate operational experience dealing with actual caseloads or case activities to determine the appropriate level or type

of automation required for their specific comprehensive Tribal IV-D program. In addition, a start-up Tribe's focus toward the end of its two-year development phase must be on preparing for and requesting approval to operate a comprehensive Tribal IV-D program. It would be premature for a start-up Tribe to anticipate approval of its application and divert the resources and time necessary to complete the automated system application process. However, once funding for a comprehensive Tribal IV-D program is approved, technical assistance is available to Tribal programs for developing and assessing the program's automation needs based on its caseload and developing the appropriate request for such automation funding.

2. *Comment:* Three Tribal commenters stated that access to Federal Tax Refund Offset (FTRO), Multi-State Financial Institution Data Match (MSFIDM) and data from the Federal Parent Locator Service (FPLS) would enhance Tribal automation and should be addressed in this regulation.

Response: We are aware that Tribal IV-D programs are interested in having access to FTRO, MSFIDM and the FPLS. However, Title IV-D of the Act does not currently authorize direct Tribal access to these enforcement tools, so expanding access to these systems cannot be addressed in this regulation.

3. *Comment:* Six Tribal commenters criticized the proposed regulations as infringing on Tribal sovereignty and exceeding the Department's statutory authority under section 455(f) of the Act stating that the rule "purports to regulate existing email, tribal computer networks and other office automation processes used in a Tribe's child support program."

Response: We do not believe this regulation, enabling Tribes to apply for and receive Federal funding for the costs of automated data processing, infringes on Tribal sovereignty. Office Automation is currently governed by existing regulations found in § 309.145(h). This rule builds on the existing regulation to expand allowable activities and costs for Tribal IV-D program automation. Section 455(f) of the Act clearly states that the Secretary shall "promulgate regulations establishing requirements which must be met by an Indian Tribe or Tribal organization to be eligible for a direct grant under title IV-D." The resulting regulation reflects the Federal government's determination of the minimum regulatory requirements necessary for the successful administration and operation of automated Tribal systems.

Section 310.1 What definitions apply to this Part?

1. *Comment:* Five Tribal commenters stated that the terms Reasonable Cost, Essential Office Automation, Federal Financial Participation (FFP), Simplified Acquisition Threshold and the reference to Part 95 titled *General Administration—Grant Programs*, should not be used in this regulation because they are inapplicable to Tribes.

Response: The terms specified above are applicable to Tribes and Tribal organizations applying for Federal funding for Computerized Tribal IV-D Systems and Office Automation. Many of the terms such as Reasonable Cost, Essential Office Automation and FFP are familiar terms to the Tribal IV-D program and have been used in existing regulations and policy documents issued by OCSE. For example, § 309.155 lists unallowable costs, including "all other costs that are not reasonable, necessary, and allocable to Tribal IV-D programs under the costs principles of OMB Circular A-87." OMB Circular A-87 defines Reasonable Cost and applies to Tribes: "This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and Federally-recognized Indian tribal governments (governmental units)."

The term Essential Office Automation appears in § 309.145 titled, *What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?* as an allowable cost. In the final rule for the Tribal Child Support Enforcement program (69 FR 16638), the term Federal funding is used rather than FFP. However, we consider the two terms interchangeable.

The term Simplified Acquisition Threshold is used in 45 CFR Part 92 titled *Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments* which clearly applies to Tribes and Tribal organizations. The scope of 45 CFR Part 92 states that "This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments." The definition of Simplified Acquisition Threshold in this rule means "a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less." This provides flexibility in the definition of Simplified Acquisition

Threshold so that Tribes and Tribal organizations may apply their monetary threshold rather than the one defined in 41 U.S.C. (*Public Contracts—Office of Federal Procurement Policy—Definitions*), given that their threshold is the lesser of the two.

With regard to Part 95, *General Administration—Grant Programs*, OCSE solicited comments in the proposed rule for the Tribal Child Support Enforcement program (65 FR 50800, 50825) stating that “OCSE [the Office] is considering applying part 95 to Tribal child support systems efforts” and that “OCSE is, however, asking for comments on the appropriateness of applying 45 CFR part 95 to the Tribal child support program and on the modifications that might be necessary or desirable to adapt part 95 to the Tribal CSE program.” In response to OCSE’s request for feedback, one out of twenty-nine commenters opposed the application of 45 CFR Part 95 to Tribal IV–D programs. We took that commenter’s suggestion into consideration in combination with comments from other stakeholders including members of the Federal/Tribal Workgroup. After careful deliberation, we determined that it would not be necessary to make all sections of Part 95 applicable to Tribal IV–D programs, but that certain terms identified in Subpart F of Part 95, *Automated Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)*, would be appropriately applied to this rule.

2. *Comment*: One Tribal commenter expressed concern that Reasonable Cost may be interpreted differently and requested assurance that there would be consistency in the treatment for each Tribal IV–D agency.

Response: This rule includes a very detailed definition of Reasonable Cost based on OMB Circular A–87, *Cost Principles for State, Local, and Indian Tribal Governments* which applies consistently to State, local and Federally-recognized Indian Tribal governments. A Tribal IV–D agency’s systems or Office Automation expenditures will be assessed based on this measurable definition of Reasonable Cost.

3. *Comment*: One Tribal commenter suggested revising the definition of Reasonable Cost by deleting the terms ‘ordinary’, ‘arms-length bargaining’, ‘market price’ and ‘established practices’.

Response: We did not revise the definition of Reasonable Cost under this regulation as each of the terms identified by the commenter is taken from the existing definition of Reasonable Cost under OMB Circular

A–87, *Cost Principles for State, Local and Indian Tribal Governments*, which applies to Indian Tribal Governments.

4. *Comment*: One Tribal commenter objected to the definition of Service Agreement stating that the Federal government cannot dictate how a Tribe executes contracts with outside agencies.

Response: The definition recognizes the Federal government’s fiduciary responsibility to ensure reasonable cost of services rendered, the effective and efficient use of Federally-funded resources, the safety and security of Federally-funded equipment, resources, and data, and the accurate accounting of the charges and expenditures under such a service agreement. Thus, we have not changed the definition in response to the comment.

Subpart B—Requirements for Computerized Tribal IV–D Systems and Office Automation

Section 310.5 What options are available for Computerized Tribal IV–D Systems and Office Automation?

1. *Comment*: Eight Tribal commenters and one State commenter requested expanding Federal funding for the development of an alternative system designed, developed, procured or enhanced entirely with Tribal funds. One commenter suggested that Federal funding should be available for a Tribally-developed system, if the cost for that system is equal to or less than the highest cost of a Computerized Tribal IV–D System or Office Automation.

Response: In our experience over many years with funding the development of automated systems in State IV–D programs, we are persuaded that the costs involved in the design and development of individual Tribal IV–D automated child support enforcement systems would be unreasonable relative to the size of the Tribal programs being served or compared to the costs of other automation options (*i.e.*, installation costs of the Model Tribal IV–D System, Intergovernmental Service Agreement or Office Automation). To allow Federal funding in the cost of an alternative system would, therefore, be contrary to the funding prerequisite for cost reasonableness cited in OMB Circular A–87.

2. *Comment*: Two Tribal commenters questioned whether the Model Tribal IV–D System would be available as an option for Tribal IV–D automation since it is currently in the testing phase and has not been released to Tribes for their review.

Response: OCSE completed development of the Model Tribal IV–D System in October 2008 and expects to complete the pilot phase in the fall of 2009. Many Tribes have reviewed the Model Tribal IV–D System by participating in one or more of the numerous live demonstrations of the system as it has been built. Additional demonstrations of the completed Model Tribal IV–D System are planned through 2009.

Section 310.10 What are the functional requirements for the Model Tribal IV–D System?

1. *Comment*: Two Tribal commenters requested that the language in this section be revised to clarify that Tribes will not be required to interface with any other system.

Response: This rule does not require Tribes to develop an automated interface with any other system. Section 310.10(c) refers to the Model Tribal IV–D System’s capacity to add on an electronic interface with State or Tribal financial management and expenditure information at the Tribe’s option versus manually reporting any fees. The requirement in § 310.10(c) is that the Model Tribal IV–D System must record and report any fees collected. We have not made any changes to the regulatory language.

2. *Comment*: Two Tribal commenters requested greater specificity as to the type of data OCSE would have access to based on § 310.10(g), which states that a Model Tribal IV–D System must “provide automated processes to enable the office to monitor Tribal IV–D program operations and to assess program performance through the audit of financial and statistical data maintained by the system.”

Response: Section 310.10(g) requires access to any Tribal IV–D program’s financial and statistical data maintained by the system.

3. *Comment*: One commenter asked that language be added to indicate that Federal funding will be available if any new data elements are added to those in § 310.10(a)(1) which requires that the Model Tribal IV–D System accept, maintain and process identifying information such as Social Security numbers, names, dates of birth and other data as required by OCSE.

Response: The regulation already addresses funding for new systems requirements, including data elements, in § 310.20(a)(4), governing the availability of Federal funding for enhancement of the Model Tribal IV–D System, should new data requirements be imposed by OCSE.

Section 310.15 What are the safeguards and processes that comprehensive Tribal IV-D agencies must have in place to ensure the security and privacy of Computerized Tribal IV-D Systems and Office Automation?

1. *Comment:* Six Tribal commenters questioned whether the safeguarding requirement in § 310.15(a) to ensure that the Computerized Tribal IV-D System and Office Automation complies with the requirements of the Federal Information Security Management Act and the Privacy Act apply to Tribal governments.

Response: The Federal Information Security Management Act (FISMA) and the Privacy Act are Federal laws that apply to Federal agencies. These laws require Federal agencies to ensure that information and information systems used by the agency or other sources on behalf of the agency are safeguarded. The FISMA applies to both information and information systems used by a Federal agency and its contractors and grantees, which would include State and local governments and Federally-recognized Tribes. Although Tribal IV-D programs do not currently have direct access to Federal information systems, they may have indirect access through agreements with State IV-D agencies.

Federal agencies must develop policies for information security oversight of contractors and other users with privileged access to Federal data. To that end, OCSE considers it imperative that Tribal IV-D programs are aware of the requirements in FISMA and the Privacy Act and that Tribal IV-D agencies should ensure that the Computerized Tribal IV-D Systems and Office Automation comply with such requirements.

2. *Comment:* Five Tribal commenters questioned the safeguarding requirement in § 310.15(a)(5) for a Tribal IV-D agency to include written policies and procedures concerning mechanisms to report (to the Department of Homeland Security) and respond to breaches of personally identifiable information and stated that reporting to the Department of Homeland Security should not apply to Indian Tribes.

Response: Federal agencies are required to report breaches or suspected breaches of Federal data to the U.S. Computer Emergency Readiness Team (US-CERT), which is part of the Department of Homeland Security (DHS) and is charged with the task of coordinating defense against and responses to cyber attacks across the nation.

A Tribal IV-D program, as part of the overall child support enforcement information system, must have written policies and procedures concerning mechanisms to report breaches or suspected breaches of Federal data. The Tribal IV-D agency has the discretion to determine the mechanism used to report the breach as a part of its written policies and procedures. The procedure for a State IV-D agency that suspects compromised Federal data is to report the suspected breach to OCSE. OCSE would then notify the ACF Chief Information Security Officer (CISO), who in turn would notify the HHS Computer Security Incident Response Center. The HHS Computer Security Incident Response Center then notifies the US-CERT of the Department of Homeland Security. A Tribal IV-D agency may establish a similar procedure.

3. *Comment:* One Tribal commenter encouraged that the preamble language stating “We also would emphasize that no Federal Tribal IV-D program requirement obligates comprehensive Tribal IV-D agencies to disclose, or otherwise make accessible, their Tribal enrollment records for the purposes of providing child support enforcement services or automating child support enforcement activities” be retained in the final rule.

Response: We agree and retained the language in this preamble.

4. *Comment:* One Tribal commenter referenced § 310.15(a), which requires written procedures to allow Tribal IV-D personnel controlled access and use of IV-D data including “permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV-A, IV-E and XIX of the Act” and suggested adding language stating that “no state or tribe can demand access to the information maintained in the tribal IV-D system without the express written consent of the Tribe.”

Response: We agree that the section referenced by the commenter addresses procedures that must be put in place to safeguard access that Tribal IV-D personnel have to IV-D information and data from programs administered under titles IV-A, IV-E and XIX of the Act. This and other sections of this regulation do not imply that a State or Tribe could demand access to a Tribal IV-D agency’s automated data processing system or Office Automation. For this reason, we do not find it necessary to revise or add language as suggested.

5. *Comment:* One Tribal commenter referenced § 310.15(a), which requires

the comprehensive Tribal IV-D agency to have written policies and procedures to safeguard the access to and use of data in the Computerized Tribal IV-D System and Office Automation. The commenter suggested adding clarification as to which safeguards must be included in the Tribal IV-D agency’s written policies and procedures.

Response: The proposed regulatory language in § 310.15(a) stating “Some of the required safeguards must include written policies and procedures * * *” has been revised deleting the words ‘some of’ for clarity so that the sentence reads: “The required safeguards must include written policies and procedures concerning the following.” A list of required safeguards appears after the introductory phrase.

Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation

Section 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation?

1. *Comment:* One Tribal commenter recommended that a comprehensive Tribal IV-D agency be able to use more than one of the options for Computerized Tribal IV-D Systems and Office Automation as defined in § 310.5 at one point in time to allow for transitions such as from a State system to the Model Tribal IV-D System.

Response: The language in § 310.20(a)(2)(i) which states that “an APD for installation of a Computerized Tribal IV-D System must represent the sole systems effort being undertaken by the comprehensive Tribal IV-D agency” does not preclude situations wherein multiple systems may be in use during a reasonable transition period from one automated system solution to another. Clearly, any transition from one automated system to another includes tasks that will need to be performed concurrently, such as data conversion, training, testing, and installation. During the installation process, further guidance will be provided.

2. *Comment:* Ten Tribal commenters and one State commenter suggested that the FFP rate in the costs of Tribal automation be increased from the applicable matching rate as defined in § 309.130(c). *How will Tribal IV-D programs be funded and what forms are required?* (The applicable matching rate, as proposed, would have been 90 percent for comprehensive Tribal IV-D programs that are operating within the first three-year period of Federal

funding and 80 percent for comprehensive Tribal IV-D programs operating in all periods following the first three-year period.) A number of commenters and consultation participants suggested that FFP in the costs of Tribal automation be increased to 100 percent Federal funding. Five commenters stressed that the proposed funding scheme would penalize the more experienced Tribes. Two commenters suggested that Federal funding for Tribal automation should in no way penalize the more experienced Tribes.

Response: We are persuaded that Tribes with comprehensive Tribal IV-D programs that have been in operation for over three years and are receiving 80 percent Federal funding should not be disadvantaged when funding for installing the Model Tribal IV-D System is available. Therefore, the final rule extends 90 percent FFP in the pre-approved costs of installing the Model Tribal IV-D System for all comprehensive Tribal IV-D programs. FFP in the costs of all other allowable activities will remain at the applicable matching rate. This includes the cost of access to State automated systems or Office Automation, for which Federal funding has been available to comprehensive Tribal IV-D programs since the inception of the program.

3. *Comment:* One Tribal commenter asked if in-kind payments or services would be accepted towards the Tribal IV-D agency's share of automation costs.

Response: Current regulations at § 309.130(d)(3) allow in-kind payments and services as a Tribal IV-D agency's share of costs, including automation costs.

4. *Comment:* One Tribal commenter referenced § 310.20(a)(4), which sets forth conditions that must be met in order to obtain FFP in the costs of enhancements, and objected to the requirement that "The project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the acquisition request is made." The commenter explained such a provision would limit smaller Tribal programs.

Response: Based on our experience with State automation efforts, this requirement is consistent with States' annual automation project expenditures and represents a sound, practical threshold to apply to ensure the cost reasonableness of Tribal automation efforts.

5. *Comment:* One Tribal commenter stated that the proposed rule does not allocate Federal funds to be used in the

development of a Model Tribal IV-D System.

Response: This rule does not provide for Federal funds towards the development of a Model Tribal IV-D System because the Model Tribal IV-D System has already been designed and developed by OCSE for use by comprehensive Tribal IV-D programs electing to automate child support activities under this rule. There are no costs, including license fees or other charges, to Tribal IV-D programs to acquire a complete copy of the Model Tribal IV-D System from OCSE, and 90 percent Federal funding is available to Tribal IV-D programs for pre-approved costs of installing the Model Tribal IV-D System.

Section 310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?

1. *Comment:* Six Tribal commenters questioned whether the Model Tribal IV-D System was developed through competitive contracting in accordance with the Competition in Contracting Act.

Response: The Model Tribal IV-D System was developed under the direction of OCSE through the use of contractor resources from two competitively procured contracts. These two procurements adhered to all Federal acquisition regulations.

2. *Comment:* One Tribal commenter stated that its ability to ensure full and open competition would be hampered because there are only two specialists in the area who are capable of enhancing their Tribe's Computerized Tribal IV-D System.

Response: There are many ways to enable increased competition in procurements, including participating in consortia-based contracts with other Tribal IV-D programs, increasing the distance or range of the procurement search, and allowing successful offerors remote access to the Computerized Tribal IV-D System, thereby reducing contracted travel and similar costs. Remote access can increase interest in the vendor community to participate in a Tribe's procurement as it can have a leveling effect on the costs being proposed by all of the prospective offerors.

3. *Comment:* One Tribal commenter requested clarification of the procurement process and asked if Tribes would need to solicit bids from other States.

Response: There is no requirement that Tribal IV-D programs solicit bids from other States.

4. *Comment:* Seven Tribal commenters questioned the intent of

§ 310.25(c) titled *Software and Ownership Rights*, as it relates to Tribally-funded systems; they suggested that the provisions of this section may inappropriately result in the Federal government reserving a license on property acquired with the Tribal funds. One commenter stated that provisions in § 310.25(c)(2) that OCSE reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes would discourage Tribes or Tribal organizations from development of their own systems at their own expense.

Response: In the preamble language to § 310.25, we indicate that "Comprehensive Tribal IV-D agencies that have elected to automate program activities through Office Automation or another alternative to Computerized Tribal IV-D Systems [such as an automated system funded entirely by a Tribe] as discussed in proposed § 310.5, would not be subject to the requirements presented in proposed § 310.25." A Tribal IV-D program's alternative system, one that was designed and developed as a fully Tribally-funded system, would only become subject to the Software and Ownership Rights clauses in § 310.25(c) if the Tribal IV-D program later sought Federal funding in the costs to operate and maintain its alternative system. We agree with commenters that § 310.25(c)(2), which states that OCSE reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, should not apply to a Tribally-funded system. We have revised this rule to limit the Software and Ownership Rights clause for a Tribally-funded system to § 310.25(c)(1), which requires that all procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV-D agency will have all ownership rights to Computerized Tribal IV-D System software or enhancements thereof and all associated documentation designed, developed or installed with FFP.

Subpart D—What requirements apply for accessing systems and records for monitoring Computerized Tribal IV-D Systems and Office Automation?

1. *Comment:* Six Tribal commenters questioned the language in § 310.40 which states that "In accordance with 45 CFR Part 95 of this title, under proposed § 310.40 a comprehensive Tribal IV-D agency must allow OCSE access to the system in all of its aspects." The

commenters proposed restricting OCSE's access to financial and procurement information in the Tribe's automated system.

Response: We do not agree that OCSE's access to information on the Tribe's automated system should be restricted. This requirement is critical for Federal oversight responsibility to ensure that Federal funds are expended appropriately and Federal grantees meet all requirements as a condition of receiving Federal funds.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Pub. L. 104-13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule.

This final rule contains reporting requirements at 45 CFR Part 310. The Department has submitted these reporting requirements to OMB for review.

Part 310 contains a regulatory requirement that, in order to receive funding for a Computerized Tribal IV-D System, a Tribe or Tribal organization must submit an Advanced Planning Document (APD) which represents the sole systems effort being undertaken by the comprehensive Tribal IV-D agency; describes the projected resource requirements for staff, hardware, software, network connections and other needs and resources available and expected to be available; contains a proposed schedule of project milestones; contains a proposed budget; and contains a statement that the comprehensive Tribal IV-D agency

agrees in writing to use the Computerized Tribal IV-D System for a minimum period of time. Tribes and Tribal organizations must respond if they wish to operate a Federally-funded Computerized Tribal IV-D System. The potential respondents to these information collection requirements are approximately 40 Federally-recognized Tribes, and Tribal organizations, during Year 1; 5 additional Federally-recognized Tribes and Tribal organizations during Year 2; and 5 additional Federally-recognized Tribes and Tribal organizations during Year 3; for a three-year total of 50 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

Information collection	Number of respondents	Response per respondent	Average burden per response	Total annual burden
Year 1				
APD	40	2	108	8,640
Acquisitions (RFPs, Contracts, etc.)	6	2	24	288
Total				8,928
Year 2				
APD	*11	2	108	2,376
Acquisitions (RFPs, Contracts, etc.)	6	2	24	288
Total				2,664
Year 3				
APD	*8	2	108	1,728
Acquisitions (RFPs, Contracts, etc.)	3	2	24	144
Total				1,872

* Figures reflect APDs from 5 additional Tribes in Year 2 and Year 3 as well as APD Updates from Tribes included in Year 1 and 2 respectively.

Total Burden for 3 Years: 13,464.

Total Annual Burden Averaged over 3 Years: 4,488 per year.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

Regulatory Impact Analysis

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 final rule is consistent with these priorities and principles. Moreover, we have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We have determined that this final rule, including setting the FFP rate in the costs of installing the Model Tribal IV-D System at 90 percent for all comprehensive Tribal IV-D agencies, is not an economically significant rule under Executive Order 12866 and will not 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,

adjusted for inflation from 1995 to 2008 using the GDP Price Deflator. The current threshold is \$133 million. Therefore, we have not prepared a budgetary impact statement. We anticipate that the costs associated with this rule will be: FY 2010—\$8m; FY 2011—\$4m; FY 2012—\$2m; FY 2013—\$3m; FY 2014—\$3m.

These regulations are authorized by 42 U.S.C. 655(f) and 42 U.S.C. 1302 and represent the final regulations governing direct funding for computerized systems and Office Automation of Tribal IV-D agencies that demonstrate the capacity to operate a child support enforcement program, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this rule.

Executive Order 13175

Executive Order 13175 sets forth principles to strengthen the United States' government-to-government relationships with Indian Tribes and to reduce the imposition of unfunded mandates upon Indian Tribes. In association with this rule, ACF held three consultation sessions on June 27, July 8 and July 9 of 2008. The consultations were held in Seattle, Washington; Catoosa, Oklahoma; and Milwaukee, Wisconsin during the summer and elicited a range of questions and suggestions which are discussed in detail throughout the preceding pages of this preamble.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a 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. As indicated above, we have determined this rule will not 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.

Congressional Review

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

Assessment of Federal Regulations and Policies on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under sec. 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105-277. This final rule gives flexibility to Tribes and Tribal organizations to use technological advancements to meet program objectives that serve this purpose.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct

compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These regulations do not have federalism implications for State or local governments as defined in the Executive Order.

List of Subjects

45 CFR 309

Child support, Grant programs—Social programs, Indians, Native Americans.

45 CFR 310

Child support, Grant programs—Social programs, Indians, Native Americans.

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

Dated: October 28, 2009.

Carmen Nazario,

Assistant Secretary for Children and Families.

Approved: November 16, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

■ For the reasons discussed in the preamble, title 45 chapter III of the Code of Federal Regulations is amended as follows:

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 42 U.S.C. 655(f), 1302.

■ 2. In § 309.130, revise paragraph (c)(3) to read as follows:

§ 309.130 How will Tribal IV-D programs be funded and what forms are required?

(c) *Federal share of program expenditures.* * * *

(3)(i) Except as provided in paragraph (c)(3)(ii) of this section, for all periods following the three-year period specified in paragraph (c)(2) of this section, a Tribe or Tribal organization will receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures made for the administration of the Tribal child support enforcement program.

(ii) A Tribe or Tribal organization will receive Federal grant funds equal to 90 percent of pre-approved costs of installing the Model Tribal IV-D System.

* * * * *

■ 3. In § 309.145, revise paragraph (h) to read as follows:

§ 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?

* * * * *

(h) Automated data processing computer systems, including:

(1) Planning efforts in the identification, evaluation, and selection of an automated data processing computer system solution meeting the program requirements defined in a Tribal IV-D plan and the automated systems requirements in part 310 of this chapter;

(2) Installation, operation, maintenance, and enhancement of a Model Tribal IV-D System as defined in and meeting the requirements of part 310 of this title;

(3) Procurement, installation, operation and maintenance of essential Office Automation capability;

(4) Establishment of Intergovernmental Service Agreements with a State and another comprehensive Tribal IV-D agency for access to the State or other Tribe's existing automated data processing computer system to support Tribal IV-D program operations, and Reasonable Costs associated with use of such a system;

(5) Operation and maintenance of a Tribal automated data processing system funded entirely with Tribal funds if the software ownership rights and license requirements in § 310.25(c)(1) are met; and

(6) Other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

* * * * *

■ 4. Revise part 310 to read as follows:

PART 310—COMPUTERIZED TRIBAL IV-D SYSTEMS AND OFFICE AUTOMATION

Subpart A—General Provisions

Sec.

310.0 What does this part cover?

310.1 What definitions apply to this part?

Subpart B—Requirements for Computerized Tribal IV-D Systems and Office Automation

310.5 What options are available for Computerized Tribal IV-D Systems and Office Automation?

310.10 What are the functional requirements for the Model Tribal IV-D System?

310.15 What are the safeguards and processes that comprehensive Tribal IV-D agencies must have in place to ensure the security and privacy of Computerized Tribal IV-D Systems and Office Automation?

Subpart C—Funding for Computerized Tribal IV–D Systems and Office Automation

- 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?
- 310.25 What conditions apply to acquisitions of Computerized Tribal IV–D Systems?
- 310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV–D Systems?
- 310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV–D Systems?

Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV–D Systems

- 310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?

Authority: 42 U.S.C. 655(f) and 1302.

Subpart A—General Provisions

§ 310.0 What does this part cover?

This part addresses conditions for funding and requirements governing Computerized Tribal IV–D Systems and Office Automation including:

- (a) The automated systems options for comprehensive Tribal IV–D programs in § 310.5 of this part;
- (b) The functional requirements for the Model Tribal IV–D Systems in § 310.10 of this part;
- (c) The security and privacy requirements for Computerized Tribal IV–D Systems and Office Automation in § 310.15 of this part;
- (d) The conditions for funding the installation, operation, maintenance, and enhancement of Computerized Tribal IV–D Systems and Office Automation in § 310.20 of this part;
- (e) The conditions that apply to acquisitions of Computerized Tribal IV–D Systems in § 310.25 of this part; and
- (f) The accountability and monitoring of Computerized Tribal IV–D Systems in § 310.40 of this part.

§ 310.1 What definitions apply to this part?

(a) The following definitions apply to this part and part 309:

(1) *Automated Data Processing Services (ADP Services)* means services for installation, maintenance, operation, and enhancement of ADP equipment and software performed by a comprehensive Tribal IV–D agency or for that agency through a services agreement or other contractual relationship with a State, another Tribe or private sector entity.

(2) *Comprehensive Tribal IV–D agency* means the organizational unit in

the Tribe or Tribal organization that has the authority for administering or supervising a comprehensive Tribal IV–D program under section 455(f) of the Act and implementing regulations in part 309 of this chapter. This is an agency meeting all requirements of § 309.65(a) of this chapter which is not in the start-up phase under § 309.65(b) of this chapter.

(3) *Computerized Tribal IV–D System* means a comprehensive Tribal IV–D program's system of data processing that is performed by electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention. A Computerized Tribal IV–D System is:

- (i) The Model Tribal IV–D System; or
 - (ii) Access to a State or comprehensive Tribal IV–D agency's existing automated data processing computer system through an Intergovernmental Service Agreement;
- (4) *Installation* means the act of installing ADP equipment and software, performing data conversion, and turnover to operation status.

(5) *Maintenance* is the totality of activities required to provide cost-effective support to an operational ADP system. Maintenance is generally routine in nature and can include activities such as: Upgrading ADP hardware, and revising/creating new reports, making limited data element/data base changes, minor data presentation changes, and other software corrections.

(6) *Model Tribal IV–D System* means an ADP system designed and developed by OCSE for comprehensive Tribal IV–D programs to include system specifications and requirements as specified in this part. The Model Tribal IV–D System effectively and efficiently allows a comprehensive Tribal IV–D agency to monitor, account for, and control all child support enforcement services and activities pursuant to part 309 of this chapter.

(7) *Office Automation* means a generic adjunct component of a computer system that supports the routine administrative functions in an organization (e.g., electronic mail, word processing, internet access), as well as similar functions performed as part of an automated data processing system. Office Automation is not specifically designed to meet the programmatic and business-centric needs of an organization.

(8) *Reasonable Cost* means a cost that is determined to be reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was

made to incur the cost. In determining reasonableness with regard to ADP systems cost, consideration shall be given to:

- (i) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of a comprehensive Tribal IV–D agency;
- (ii) The restraints or requirements imposed by such factors as: Sound business practices; arms-length bargaining; Federal, Tribal laws and regulations; and terms and conditions of any direct Federal funding;
- (iii) Whether the individual concerned acted with prudence in the circumstances considering his or her responsibilities to the comprehensive Tribal IV–D agency, its employees, the public at large, and the Federal Government;
- (iv) Market prices for comparable goods or services;
- (v) Significant deviations from the established practices of the comprehensive Tribal IV–D agency which may unjustifiably increase the cost; and

(vi) Whether a project's Total Acquisition Cost is in excess of the comprehensive Tribal IV–D agency's total Tribal IV–D program grant award for the year in which the request is made.

(9) *Service Agreement* means a document signed by the Tribe or Tribal organization operating a comprehensive Tribal IV–D program under § 309.65(a) and the State or other comprehensive Tribal IV–D program whenever the latter provides data processing services to the former and identifies those ADP services that the State or other comprehensive Tribal IV–D program will provide to the Tribe or Tribal organization. Additionally, a Service Agreement would include the following details:

- (i) Schedule of charges for each identified ADP service and a certification that these charges apply equally to all users;
- (ii) Description of the method(s) of accounting for the services rendered under the agreement and computing service charges;
- (iii) Assurances that services provided will be timely and satisfactory;
- (iv) Assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with proposed § 310.15;
- (v) Beginning and ending dates of the period of time covered by the Service Agreement; and
- (vi) Schedule of expected total charges for the period of the Service Agreement.

(10) *Simplified Acquisition Threshold* for ADP systems, equipment, and service acquisitions means a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less.

(b) The following terms apply to this part and are defined in § 95.605 of this title: "Acquisition"; "Advance Planning Document (APD)"; "Design or System Design"; "Development"; "Enhancement"; "Federal Financial Participation (FFP)"; "Operation"; "Project"; "Software"; and "Total Acquisition Cost".

(c) All of the terms defined in § 309.05 of this chapter apply to this part.

Subpart B: Requirements for Computerized Tribal IV-D Systems and Office Automation

§ 310.5 What options are available for Computerized Tribal IV-D Systems and office automation?

(a) *Allowable computerized support enforcement systems for a Comprehensive Tribal IV-D agency.* A comprehensive Tribal IV-D agency may have in effect an operational computerized support enforcement system that meets Federal requirements under this part.

(b) *Computerized Tribal IV-D Systems.* A Computerized Tribal IV-D System must be one of the design options listed below. A comprehensive Tribal IV-D program may automate its case processing and recordkeeping processes through:

(1) Installation, operation, maintenance, or enhancement of the Model Tribal IV-D System designed by OCSE to address the program requirements defined in a Tribal IV-D plan in accordance with § 309.65(a) of this chapter and the functional requirements in § 310.10 of this part;

(2) Establishment of Intergovernmental Service Agreements with a State or another comprehensive Tribal IV-D agency for access to that agency's existing automated data processing computer system to support comprehensive Tribal IV-D program operations.

(c) *Office Automation.* A comprehensive Tribal IV-D agency may opt to conduct automated data processing and recordkeeping activities through Office Automation. Allowable activities under this paragraph include procurement, installation, operation and maintenance of essential Office Automation capability as defined in § 310.1 of this part.

(d) *Alternative to Computerized Tribal IV-D Systems and Office Automation.* A

comprehensive Tribal IV-D agency may design, develop, procure, or enhance an automated data processing system funded entirely with Tribal funds.

§ 310.10 What are the functional requirements for the Model Tribal IV-D System?

A Model Tribal IV-D System must:

(a) Accept, maintain and process the actions in the support collection and paternity determination processes under the Tribal IV-D plan, including:

(1) Identifying information such as Social Security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom paternity and support obligations are sought to be established or enforced and on individuals to whom support obligations are owed, and other data as may be requested by OCSE;

(2) Verifying information on individuals referred to in paragraph (a)(1) of this section with Tribal, Federal, State and local agencies, both intra-tribal and intergovernmental;

(3) Maintaining information pertaining to:

(i) Applications and referrals for Tribal IV-D services, including:

(A) Case record;

(B) Referral to the appropriate processing unit (i.e., locate or paternity establishment);

(C) Caseworker notification;

(D) Case Identification Number; and

(E) Participant Identification Number;

(ii) Delinquency and enforcement activities;

(iii) Intra-tribal, intergovernmental, and Federal location of the putative father and noncustodial parents;

(iv) The establishment of paternity;

(v) The establishment of support obligations;

(vi) The payment and status of current support obligations;

(vii) The payment and status of arrearage accounts;

(4) Maintaining data on case actions administered by both the initiating and responding jurisdictions in intergovernmental cases;

(b) Update, maintain and manage all IV-D cases under the Tribal IV-D plan from initial application or referral through collection and enforcement, including any events, transactions, or actions taken therein;

(c) Record and report any fees collected, either directly or by interfacing with State or Tribal financial management and expenditure information;

(d) Distribute current support and arrearage collections in accordance with Federal regulations at § 309.115 of this chapter and Tribal laws;

(e) Maintain, process and monitor accounts receivable on all amounts owed, collected, and distributed with regard to:

(1) Detailed payment histories that include the following:

(i) Amount of each payment;

(ii) Date of each collection;

(iii) Method of payment;

(iv) Distribution of payments; and

(v) Date of each disbursement;

(2) Automated income withholding activities such as:

(i) Recording and maintaining any date the noncustodial parent defaults on payment of the support obligation in an amount equal to the support payable for one month;

(ii) Generating the Standard Federal Income Withholding Form; and

(iii) Allocating amounts received by income withholding according to §§ 309.110 and 309.115 of this chapter.

(f) Maintain and automatically generate data necessary to meet Federal reporting requirements on a timely basis as prescribed by OCSE. At a minimum this must include:

(1) Yearly notices on support collected, which are itemized by month of collection and provided to families receiving services under the comprehensive Tribal IV-D program as required in § 309.75(c) of this chapter, to all case participants regarding support collections; and

(2) Reports submitted to OCSE for program monitoring and program performance as required in § 309.170 of this chapter;

(g) Provide automated processes to enable OCSE to monitor Tribal IV-D program operations and to assess program performance through the audit of financial and statistical data maintained by the system; and

(h) Provide security to prevent unauthorized access to, or use of, the data in the system as detailed in § 310.15 of this part.

§ 310.15 What are the safeguards and processes that comprehensive Tribal IV-D agencies must have in place to ensure the security and privacy of Computerized Tribal IV-D Systems and Office Automation?

(a) *Information integrity and security.* The comprehensive Tribal IV-D agency must have safeguards on the integrity, accuracy, completeness, access to, and use of data in the Computerized Tribal IV-D System and Office Automation. Computerized Tribal IV-D Systems and Office Automation should be compliant with the Federal Information Security Management Act, and the Privacy Act. The required safeguards must include written policies and procedures concerning the following:

(1) Periodic evaluations of the system for risk of security and privacy breaches;

(2) Procedures to allow Tribal IV-D personnel controlled access and use of IV-D data, including:

(i) Specifying the data which may be used for particular IV-D program purposes, and the personnel permitted access to such data;

(ii) Permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV-A, IV-E and XIX of the Act to the extent necessary to carry out the comprehensive Tribal IV-D agency's responsibilities with respect to such programs;

(3) Maintenance and control of application software program data;

(4) Mechanisms to back-up and otherwise protect hardware, software, documents, and other communications; and,

(5) Mechanisms to report breaches or suspected breaches of personally identifiable information to the Department of Homeland Security, and to respond to those breaches.

(b) *Monitoring of access.* The comprehensive Tribal IV-D agency must monitor routine access to and use of the Computerized Tribal IV-D System and Office Automation through methods such as audit trails and feedback mechanisms to guard against, and promptly identify, unauthorized access or use;

(c) *Training and information.* The comprehensive Tribal IV-D agency must have procedures to ensure that all personnel, including Tribal IV-D staff and contractors, who may have access to or be required to use confidential program data in the Computerized Tribal IV-D System and Office Automation are adequately trained in security procedures.

(d) *Penalties.* The comprehensive Tribal IV-D agency must have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information.

Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation

§ 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation?

(a) *Conditions that must be met for FFP at the applicable matching rate in § 309.130(c) of this chapter for Computerized Tribal IV-D Systems.* The following conditions must be met to

obtain 90 percent FFP in the costs of installation of the Model Tribal IV-D System and FFP at the applicable matching rate under § 309.130(c) of this chapter in the costs of operation, maintenance, and enhancement of a Computerized Tribal IV-D System:

(1) A comprehensive Tribal IV-D agency must have submitted, and OCSE must have approved, an Advance Planning Document (APD) for the installation and enhancement of a Computerized Tribal IV-D System;

(2) An APD for installation of a Computerized Tribal IV-D System must:

(i) Represent the sole systems effort being undertaken by the comprehensive Tribal IV-D agency under this part;

(ii) Describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements;

(iii) Contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and complexity of the initial implementation project;

(iv) Contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV-D System; and

(v) Contain a statement that the comprehensive Tribal IV-D agency agrees in writing to use the Computerized Tribal IV-D System for a minimum period of time;

(3) The following conditions, in addition to those in paragraphs (a)(1) and (2) of this section, must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV-D program's ADP system established under an Intergovernmental Service Agreement. The comprehensive Tribal IV-D agency must:

(i) Maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review; and

(ii) Ensure that the:

(A) Service Agreement for which FFP is being sought, meets the definition of a Service Agreement as defined in § 310.1 of this title;

(B) Claims for FFP conform to the timely claim provisions of part 95 subpart A of this title; and

(C) Service Agreement was not previously disapproved by the Department.

(4) The following conditions, in addition to those in paragraphs (a)(1) through (3) of this section, must be met in order for a comprehensive Tribal IV-

D agency to obtain FFP in the costs of enhancements to its Computerized Tribal IV-D System:

(i) The project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the acquisition request is made; and

(ii) The APD budget, schedule and commitment to use the Computerized Tribal IV-D System for a specified minimum period of time must be updated to reflect the enhancement project.

(5) To receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV-D System installed under § 310.20 or developed under § 309.145(h)(5), which refers to a Tribal automated data processing system that is funded entirely with Tribal funds, the comprehensive Tribal IV-D agency must include operation and maintenance costs in its annual Title IV-D program budget submission in accordance with § 309.15(c) of this chapter;

(6) To receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV-D agency must include such costs in its annual Title IV-D program budget submission in accordance with § 309.15(c) of this chapter;

(b) *Procedure for APD Submittal.* The comprehensive Tribal IV-D agency must submit an APD for a Computerized Tribal IV-D System to the Commissioner of OCSE, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV-D agency must be approved and signed by the comprehensive Tribal IV-D agency Director and the appropriate Tribal officials prior to submission to OCSE for approval.

§ 310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?

(a) *APD Approval.* A comprehensive Tribal IV-D agency must have an approved APD in accordance with the applicable requirements of § 310.20 of this part prior to initiating acquisition of a Computerized Tribal IV-D System.

(b) *Procurements.* Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to OCSE for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will

exceed the Simplified Acquisition Threshold;

(c) *Software and ownership rights.* (1) All procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV-D agency will have all ownership rights to Computerized Tribal IV-D System software or enhancements thereof and all associated documentation designed, developed or installed with FFP. Intergovernmental Service Agreements are not subject to this paragraph.

(2) OCSE reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such as software, modifications and documentation.

(3) FFP is not available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV-D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement.

(d) *Requirements for acquisitions under the threshold amount.* A comprehensive Tribal IV-D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions under the Simplified Acquisition Threshold unless specifically requested to do so in writing by OCSE.

§ 310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV-D Systems?

(a) *Suspension of APD approval.* OCSE will suspend approval of the APD for a Computerized Tribal IV-D System approved under this part as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions of the APD. OCSE will notify a Tribal IV-D agency in writing in a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance.

(b) *Suspension of FFP.* If OCSE suspends approval of an APD in accordance with this part during the installation, operation, or enhancement of a Computerized Tribal IV-D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date OCSE determines that the comprehensive Tribal IV-D agency has taken the actions specified in the notice of suspension described in paragraph (a)

of this section. OCSE will notify the comprehensive Tribal IV-D agency in writing upon making such a determination.

§ 310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV-D Systems?

(a) *Conditions that must be met for emergency FFP.* OCSE will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV-D agency. In order for OCSE to consider waiving the approval requirements in § 310.25 of this part, the following conditions must be met:

(1) The comprehensive Tribal IV-D agency must submit a written request to OCSE prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include:

(i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which resulted in the comprehensive Tribal IV-D agency's need to proceed prior to obtaining approval from OCSE; and

(iii) A description of the harm that will be caused if the comprehensive Tribal IV-D agency does not acquire immediately the ADP equipment and services.

(2) Upon receipt of the information, OCSE will, within 14 working days of receipt, take one of the following actions:

(i) Inform the comprehensive Tribal IV-D agency in writing that the request has been disapproved and the reason for disapproval; or

(ii) Inform the comprehensive Tribal IV-D agency in writing that OCSE recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) of this section the comprehensive Tribal IV-D agency must submit a formal request for approval which includes the information specified at § 310.25 of this title in order for the ADP equipment or services acquisition to be considered for OCSE's approval.

(b) *Effective date of emergency FFP.* If OCSE approves the request submitted under paragraph (a)(2) of this section, FFP will be available from the date the comprehensive Tribal IV-D agency acquires the ADP equipment and services.

Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV-D Systems

§ 310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV-D Systems and Office Automation?

In accordance with Part 95 of this title, a comprehensive Tribal IV-D agency must allow OCSE access to the system in all of its aspects, including installation, operation, and cost records of contractors and subcontractors, and of Service Agreements at such intervals as are deemed necessary by OCSE to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST-2008-0184]

RIN 2105-AD67

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; response to comments on Interim Final rule.

SUMMARY: This final rule adopts as final, without change, a June 13, 2008, interim final rule (IFR) authorizing employers in the Department's drug and alcohol testing program to disclose to State commercial driver licensing (CDL) authorities the drug and alcohol violations of employees who hold CDLs and operate commercial motor vehicles (CMVs), when a State law requires such reporting. The rule also responds to comments on the IFR.

DATES: This rule is effective February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Patrice M. Kelly, Deputy Director, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202-366-3784 (voice), 202-366-3897 (fax), or patrice.kelly@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Department's drug and alcohol testing procedures regulation, 49 CFR Part 40, provides confidentiality of