

Sunshine Act Meetings

Federal Register

Vol. 51, No. 40

Friday, February 28, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, February 24, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Countrywide Thrift and Loan, an operating noninsured industrial bank located at 155 N. Lake Avenue, Pasadena, California, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: February 25, 1986.
Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86-4497 Filed 2-26-86; 12:56 pm]
BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of

subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, February 24, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the Corporation's assistance agreements with insured banks.

By the same majority vote, the Board further determined that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 25, 1986.
Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary

[FR Doc. 86-4498 Filed 2-26-86; 12:57 pm]
BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:52 p.m. on Monday, February 24, 1986, the Board of Directors of the Federal Deposit Insurance Corporation

met in closed session to adopt a resolution making funds available to pay deposits made in Elk City State Bank, Elk City, Oklahoma, which had been closed by the Bank Commissioner for the State of Oklahoma on Friday, February 21, 1986.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(B)).

The meeting was held in the Chairman's Office, Room 6023, in the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: February 26, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-4499 Filed 2-26-86; 12:58 pm]
BILLING CODE 6714-01-M

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FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 5, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Docket No. 85-7—Independent Action—Notice and Meeting Provisions in Conference Agreements—Consideration of Proposed Rule and Comments.

Portion closed to the public:

1. Docket No. 84-33—Section 19 Inquiry—United States/Argentina and United States/Brazil Trades—Status of Proceeding.

CONTACT PERSON FOR MORE

INFORMATION: John Robert Ewers,
Secretary (202) 523-5725.

John Robert Ewers,
Secretary.

[FR Doc. 86-4420 Filed 2-25-86; 4:35 pm]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 6349, February 21, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, February 26, 1986.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting; Proposed statement to be presented to the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Committee on Government Operations regarding the Export Trading Company Act of 1982.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204.

Dated: February 26, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4541 Filed 2-26-86; 8:45 am]

BILLING CODE 6210-01-M

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FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: 10:00 a.m., Wednesday, March 5, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:*Summary Agenda*

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of an application by the State of Wisconsin for an exemption from Subpart B of Regulation AA (Unfair or Deceptive Acts or Practices).

Discussion Agenda

2. Proposed revisions to Regulations D (Reserve Requirements of Depository Institutions) and Q (Interest on Deposits) to reflect the expiration of the Depository Institutions Deregulation Act. (Proposed earlier for public comment; Docket No. R-0565)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve, Washington, DC 20551.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204.

Dated: February 26, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4452 Filed 2-26-86; 11:22 am]

BILLING CODE 6210-01-M

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FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: Approximately 10:30 a.m., Wednesday, March 5, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 26, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4453 Filed 2-26-86; 11:23 am]

BILLING CODE 6210-01-M

8

FEDERAL TRADE COMMISSION

TIME AND PLACE: 10:00 a.m., Wednesday, March 5, 1986.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED:

Consideration of Amendment of Pre-Sale Availability Rule—16 CFR 702 (1985).

CONTACT PERSON FOR MORE

INFORMATION: Susan B. Ticknor, Office of Public Affairs; (202) 523-1892. Recorded Message: (202) 5423-3806.

Emily H. Rock,

Secretary.

[FR Doc. 86-4451 Filed 2-26-86; 11:17 am]

BILLING CODE 6750-01-M

Friday
February 28, 1986



Part II

Department of Labor

Employment and Training Administration

Department of Agriculture

Food and Nutrition Service

Department of Health and Human Services

Social Security Administration

Health Care Financing Administration

Income and Eligibility Verification Procedures for
Food Stamps, Aid to Families With Dependent
Children, State Administered Adult Assistance,
Medicaid and Unemployment Compensation
Programs; Final Rule

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service**

7 CFR Parts 271, 272, 273 and 275

DEPARTMENT OF LABOR**Employment and Training Administration**

20 CFR Part 603

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration**

42 CFR Parts 431 and 435

Social Security Administration

45 CFR Parts 205, 206 and 232

Income and Eligibility Verification Procedures for Food Stamps, Aid to Families With Dependent Children, State Administered Adult Assistance, Medicaid and Unemployment Compensation Programs

AGENCIES: Food and Nutrition Service, Department of Agriculture; Health Care Financing Administration and Social Security Administration, Department of Health and Human Services; Employment and Training Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: These final regulations implement changes made in the following programs:

1. The Food Stamp program under the Food Stamp Act of 1977, as amended;
2. The Aid to Families with Dependent Children (AFDC) program under Title IV-A of the Social Security Act; the Adult Assistance programs under Titles I, X, XIV, and XVI (AABD) of the Social Security Act;
3. The Medicaid program under Title XIX of the Social Security Act; and,
4. The Unemployment Compensation program under Title III of the Social Security Act.

This action is being taken to implement section 2651 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98-369) regarding income and eligibility verification procedures. This section requires State agencies that administer the Food Stamp Program (FSP), the Aid to Families with Dependent Children Program (AFDC), the Adult Assistance programs (in the Territories), the Medicaid program and the Unemployment Compensation (UC) program to develop an Income and Eligibility Verification System (IEVS) which meets certain statutory

requirements. The major statutory changes reflected in these regulations provide State agencies with additional sources of useful information in verifying applicant and recipient reported circumstances and also ensure that appropriate privacy and procedural safeguards are applied in the use of the information.

EFFECTIVE DATE: These regulations are effective May 29, 1986.

FOR FURTHER INFORMATION CONTACT:

For Food Stamps: Bonny O'Neil, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756-3414

For AFDC and Adult Assistance Programs: Barbara M. Levering, Director, Office of Intergovernmental Communications, Office of Family Assistance, Social Security Administration, 2100 Second Street SW., Washington, D.C. 20201, (202) 245-2637

For Medicaid: Joyce G. Somsak, Director, Office of Quality Control Programs, BQC, Health Care Financing Administration, DHHS, Room 239 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21203, (301) 597-1354

For Unemployment Compensation: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Room 6112, Washington, D.C. 20213, (202) 376-6636

SUPPLEMENTARY INFORMATION:**BACKGROUND AND OBJECTIVES**

On March 14, 1985, a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (50 FR 10450). This notice proposed to amend Parts 271, 272, 273 and 275 of Title 7, amend Parts 205, 206 and 232 of Chapter II of Title 45, amend Parts 431 and 435 of Chapter IV, Title 42 and add new Part 603 to Chapter V of Title 20 of the Code of Federal Regulations.

Section 2651 of DEFRA amended the Social Security Act, the Food Stamp Act and the Internal Revenue Code for the purpose of enabling and requiring Federally funded public assistance and unemployment agencies to make more accurate eligibility determinations and benefit payments by exchanging information with each other and by obtaining unearned income data from the Internal Revenue Service (IRS) and other income and wage data from the Social Security Administration (SSA) and from State wage and

Unemployment Insurance Benefit (UIB) data files.

DISCUSSION OF MAJOR PROVISIONS AND RESPONSES TO COMMENTS

Provided in the discussion below are the major provisions of the NPRM, significant comments received on each provision, the responses to such comments, and changes incorporated into the final regulations.

Although the final comment period closed on April 29, 1985, the three Departments accepted and considered all comments on the NPRM received by June 11, 1985. Comments on the NPRM were received from 53 parties: 38 States, 6 client advocate groups, 4 local or county welfare agencies, 4 Federal agencies and 1 private citizen. A number of commenters responded in a positive way to the NPRM approach of a joint publication of Federal regulations by the three Departments. We have maintained that approach in these final rules with a single preamble authored by the Office of Family Assistance (OFA), the Food and Nutrition Service (FNS), and the Health Care Financing Administration (HCFA), responding to public assistance program issues followed by the individual regulations. A separate discussion authored by the Employment and Training Administration (ETA) addressing issues specific to State UC agencies follows the discussion of issues directly relating to the public assistance programs.

A. Public Assistance Programs

The provisions of the NPRM that specified the required timeframes for State welfare agency use of the IEVS data received the most comments. The Federal agencies have considered the comments and have: (a) Revised the requirements that information on applicants be requested and used during the application period; and (b) modified the timeframe for requesting and acting on information on recipients.

A significant number of comments were also received on State agency reporting requirements involving the use of IEVS data. The Federal agencies have considered the comments of the public and have adjusted the final regulations to reduce the reporting burden placed on the State public assistance agencies.

During the course of the following discussion, the pronoun "we" is used to include the three Federal agencies (OFA, HCFA and FNS) administering public assistance programs unless otherwise specified. "Applicant" and "recipient" are terms used generally for all public assistance programs.

We have made minor and technical changes as a result of our own review of the NPRM and we have clarified regulatory language as necessary to aid in the implementation of the provisions. We have also changed the term "Statewide Income and Eligibility Verification System (SIEVS)" to "Income and Eligibility Verification System (IEVS)." No change in substance is intended by this redesignation.

1. General

a. Costs and Savings

The common preamble and the Medicaid NPRM included a voluntary regulatory impact statement which discussed potential costs and savings in implementing this regulation. Several comments were received regarding these potential savings. One commenter anticipates that initial savings will be far more significant than ongoing savings and will not be high in States with current wage and UC match systems. Another commenter, in questioning potential savings, suggested that the Federal government totally fund the program for one year after which we could assess savings and compare them against costs.

Response: Savings achieved during initial reviews of existing recipients may be high as it is possible that a significant number of recipients will be found to be ineligible or receiving excess benefits and will have their benefits terminated or reduced. However, there will be long term savings resulting from terminated or reduced benefits. IEVS should enable States to identify unreported changes in circumstances which may result in determination of ineligibility or excess benefits and in addition discourage new applicants from attempting to receive benefits to which they are not entitled. Also, the use of the information for valid related program purposes such as determining available third party resources for health care benefits can result in additional program savings. The commenter may be correct that significant new savings may not accrue from wage and UIB matching in States that currently and effectively perform such activities for their AFDC and food stamp recipients. However, even these States should achieve new savings from receipt of relevant SSA and IRS data. Costs for implementing these provisions are reimbursable only to the extent provided under statutory and regulatory authorities. The Federal government has no authority to fund the program totally.

b. Applicability of IEVS Requirements

(1) *Emergency Assistance Program; Refugee Cash Assistance Program.*

Some commenters inquired as to whether the IEVS requirements apply to recipients of the Emergency Assistance (EA) Program or Refugee Cash Assistance (RCA) Program.

Response: Pursuant to the statute, the EA program is not subject to the IEVS requirements. In those cases where emergency assistance is provided to individuals applying for or receiving benefits under one of the programs covered by these regulations, however, the State agency must comply with the appropriate IEVS requirements. The RCA Program provides financial assistance under Title IV of the Immigration and Naturalization Act to recently arrived refugees who are ineligible for AFDC and the Adult Assistance Programs. Since these funds are not paid under any title of the Social Security Act, the State is not required to include these applicants and recipients in the IEVS.

States also provide assistance to refugees, who are eligible, under the AFDC or Adult Assistance Programs. Since these individuals receive assistance under the Social Security Act, they must be included in the IEVS.

(2) *Medicaid Program.* One commenter recommended that HCFA include a provision exempting a State Medicaid agency from the responsibility of matching IEVS data.

Response: The requirements of the Medicaid regulation apply only in those situations in which the Medicaid agency makes the eligibility determination. For Medicaid recipients eligible by virtue of receipt of AFDC assistance, the AFDC IEVS requirements would already apply. For aged, blind, or disabled Medicaid recipients receiving SSI payments the Medicaid IEVS requirements do not apply if such recipients' Medicaid eligibility is determined by SSA pursuant to section 1634 of the Social Security Act. In any case the Medicaid State agency may access IEVS data on recipients whether or not it is responsible for the eligibility decision. It should be noted that IEVS information may be accessed and used for purposes of determining third party liability. HCFA is currently considering proposing that all Medicaid agencies be required to use IEVS information for that purpose. Commenters also asked if children in foster care or receiving adoption assistance are included under IEVS requirements for Medicaid; this is discussed in section 5 of the preamble in connection with SSNs.

c. Use of IEVS Data

We have included a discussion of how IEVS data is to be used with respect to verifying household circumstances in

section 4 of this preamble concerning independent verification. Both the FSP and the AFDC proposed rules incorporated current rules providing for the use of wage match data for criminal and civil prosecutions. HCFA's current rules (42 CFR 431.300ff) also provide for the use or disclosure of applicant or recipient information for purposes directly related to State plan administration including criminal and civil prosecution. The final rules retain this provision.

One commenter on the FSP proposed rule argued that the use of IEVS information for prosecution is improper.

Response: Prior FSP rulemaking on wage matching has responded to this concern (See FSP proposed rules of July 10, 1981 (46 FR 35658) and final rules of May 7, 1982 (47 FR 19940)). As discussed in this final rule a major purpose of wage matching is deterrence. The possibility of fraud prosecution should reduce deliberate incorrect reporting. A further clarification has been made in the FSP rule to indicate that the data which is obtained from IEVS could be used to obtain information for prosecutions. Thus, it could be used as the basis for investigations in the same way as it is used as a basis of inquiry about household circumstances.

One commenter stated that the regulations can be interpreted to exclude use of IEVS information beyond the programs explicitly authorized to use it and requested that we clarify whether, for example, information regarding a Medicaid participant could be used in a general assistance fraud situation.

Response: Current AFDC and Medicaid regulations permit disclosure of information concerning applicants and recipients to all Federal or Federally-funded programs which provide assistance in cash or in kind or services to individuals on the basis of need. This excludes general assistance programs. Current FSP regulations permit disclosure to the same programs as AFDC and Medicaid and add to the list general assistance programs which are subject to joint processing requirements. Thus, State data from IEVS can be disclosed to certain general assistance programs only by the FSP. DEFRA permits States to disclose SSA wage data and IRS unearned income data only to programs listed in statute: AFDC, Adult Assistance, Medicaid, SSI, UC, FSP, Child Support Enforcement, and Old Age, Survivors and Disability Insurance (OASDI). Thus, tax return data cannot be redisclosed to general assistance programs or to other Federal

or Federally-assisted programs such as Title XX.

d. Oversight and Coordination of IEVS

Several commenters thought that the final rules should designate or specify a process for States to designate a State entity to oversee implementation of IEVS and that the Federal government should designate a Federal entity to coordinate Federal activities and or/ resolve interagency or interstate disputes.

Response: Final rules do not place any specified type of oversight requirement on States. There is no statutory requirement to require States to organize implementation of the IEVS requirements in any special way; in fact such a requirement might interfere with current State activities under requirements prior to DEFRA. We do not believe it serves any useful purpose to intervene in State organizational arrangements. We do not plan to add to existing Federal oversight mechanisms. The agencies are committed to close coordination of guidelines and requirements to avoid confusion and delay as demonstrated by their joint publication of implementing regulations.

One commenter thought the Federal agencies should establish and document uniform guidelines and programming specifications for the required matches and a general systems design should be prepared and issued to State agencies before implementation.

Response: It is not feasible to establish such guidelines within the time frames posed by these regulations except for the standardized formats under development. It is possible that each Federal agency (OFA, FNS, and HCFA) will publish additional guidelines for the States as implementation and operational experience demonstrate a need for such guidance.

2. Access and Use of Information

This section discusses separately the requirements for access and use of information on applicants and recipients.

a. Applicants

(1) *Timeframes and action.* The proposed rules for AFDC, FSP and Medicaid required that State agencies obtain and use information from IEVS as part of the eligibility determination for applicants. Applicants include all individuals applying for assistance and for whom application is made. There was some variation among the three program rules in the proposed timeframes because of current program regulatory differences in this area.

Medicaid's proposed timeframe was the application period, a maximum of 45 days (60 days for disabled applicants); the AFDC timeframe was 45 days from the date of application; the FSP timeframe was specified as 30 days, to conform to the Food Stamp statute for delivery of benefits. The NPRM did not specify the frequency with which the agency must request information on applicants, requiring instead that the information be obtained and used within the program-specified periods. None of the programs permitted the eligibility decision to be delayed pending receipt of IEVS information. If IEVS information was received after an applicant had been determined eligible, the data was required to be used within 20 days of receipt.

The primary concern of commenters was that the sources of required data matches, in particular IRS, would not return match results in time to act on applications within a 30 or 45-day application period. One commenter suggested that the regulations require that the request for data be made within the application period.

Response: We agree the proposed timeframes for applicants need some adjustment. We also believe that data should be requested as soon as practicable and used to the extent possible in the eligibility/benefit determination. Consequently the final rules distinguish between requesting and using information.

Specifically the final rules require that data from all of the required sources must be requested on applicants for Medicaid, AFDC, Adult Assistance and FSP at the first available opportunity, which would be the next scheduled match for each source. The agency must use the information from such requests in making the eligibility determination if the information is received by the agency so it can be used before the agency mails its notice of decision to the applicant. If the information is received after the application has been approved, the data must be used within the timeframe for action on information received on recipients, as discussed later in this section.

The regulatory requirement for the establishment of agreements has been amended to specify the State Wage Information Collection Agency (SWICA) must accept and process requests for wage information no less frequently than twice monthly. This change will enable States to request, obtain and use wage information on applicants as early as possible in the application period. The number of applicant requests made on this frequency will, in most cases, be relatively few and should not represent

a problem to either the State agency or the SWICA in scheduling of data processing.

The frequency for obtaining UIB information for applicants has been similarly changed. The State agency must request UIB information from the State UC agency on each applicant at the first available opportunity and the agreement between the two agencies must specify that the UC agency will accept and process these requests for applicants no less frequently than twice monthly.

We emphasize that this twice-monthly frequency is a minimum requirement. Many States already provide more frequent access to State wage data and UIB data files. We encourage States to develop on-line systems and other methods for rapid turnaround of State agency requests so that wage and UIB data can be used to determine eligibility and benefits of applicants.

With regard to IRS data, the final rules require that requests for IRS data for applicants must be made at the first available "monthly" IRS match date. IRS has published a schedule of its monthly cycles for processing these requests and the dates by which requests must be received. It should be noted that IRS Revenue Procedure 85-21 (April 8, 1985), which we have provided all State agencies, announced that eleven monthly match deadlines are being made available to States in the twelve-month period beginning July 1985. For the purpose of this rule, the monthly deadline for tape submittal to IRS will constitute the next available opportunity for requesting IRS information on applicants.

With regard to requesting data from SSA at the first available opportunity, the State agency would meet the requirement by accreting the applicant in the next processing cycle of the Beneficiary and Earnings Data Exchange (BENDEX) system. This does not preclude the use of the Third Party Query (TPQY) system as discussed in Section (3)(e) of this preamble. BENDEX provides the agency with pension, earnings and self-employment information and creates a record which would generate automatic notices to the State when updated information becomes available.

(2) *Non-delay of eligibility.* The proposed AFDC, Adult Assistance and FSP rules provided that a State agency could not delay the eligibility determination solely to await IEVS information it had requested unless it had reason to believe information reported by the applicant was not accurate. Current regulations prohibit an

agency from delaying approval of an application beyond the stated application timeframes without documenting cause.

Nonetheless, seven commenters were concerned that the requirements in the NPRM for obtaining and using IEVS information within a specified period after the date of application would in some cases delay eligibility determination beyond the standard for promptness. Three commenters suggested a State could avoid delaying eligibility determination only if on-line access (or other methods that would ensure rapid turnaround of requests) were provided. One commenter asked us to make clear in the final rules that the period of time between the State agency's request and receipt of information does not constitute a "waiting period" in which action on an application can be delayed. Several commenters believed that our counsel against delaying approval of applications beyond the proposed time limits in order to receive and use the match information was not strong enough. One commenter stated it was essential to ensure there was no delay in eligibility for the truly needy.

Response: We stress again that eligibility determinations must continue to be processed according to the Federal timeframe standards specified in each program's regulations. State agencies are expected to make the eligibility determinations as promptly as possible and may not hold a pending application solely to await IEVS information which it has requested, if other evidence establishes the individual's eligibility for assistance. Consequently, there is no waiting period. We encourage the use of on-line systems for front end verification, but our rules do not require States to have this capability.

(3) *Applicants becoming recipients.* Like the proposed rules, the final rules provide that information requested on applicants but received after an eligibility determination has been made must be acted on according to the timeframe specified for recipients. If an applicant becomes a recipient before the match can be initiated, the State agency must still match the individual at the first available opportunity. Match results on such individuals must be used in accordance with the schedule for action on recipients.

(4) *Social Security Numbers (SSNs).* Commenters asked what matching requirements apply for an applicant who does not have an SSN at application.

Response: The final rules have been amended to provide that each individual must be matched at the next cycle of applicant matching after the State

agency obtains the SSN, whether the individual is then a recipient or still an applicant. As discussed in section 5 of this preamble, DEFRA requires the furnishing of an SSN to effectively associate records. The requirement for timely matching when the SSN is furnished will help ensure that long periods of ineligibility are prevented.

One commenter suggested that in the case of applicants with a SSN(s), data not be requested until after the SSN is verified.

Response: The final rules do not adopt this suggestion because it would delay many requests on applicants until SSA can verify the SSN, which may take over a month. We would point out that obtaining information on applicants will in some instances constitute verification of the SSN, as discussed in sections of this preamble dealing with SSNs.

(5) *Denied applicants.* Several commenters requested that State agencies not be required to request IEVS data for applicants who are denied eligibility based on information obtained during the routine application process.

Response: State agencies are not required to request or use IEVS data on applicants after they are determined to be ineligible. However, if the application is pending at the first available opportunity for matching with the respective sources, the data must be requested.

(6) *Other individuals whose income or resources are considered.* Two commenters noted that the NPRM did not propose requirements for exchanges of data on members of the household (other than applicants or recipients) or require them to furnish SSNs.

Response: With respect to the requirement for furnishing SSNs, DEFRA mandates that only applicants and recipients furnish their SSNs as a condition of eligibility. Under section 7(a) of the Privacy Act (Pub. L. 93-579), unless the disclosure of a SSN is required by Federal law, or was required before January 1, 1975, a State may not require such disclosure. There is no Federal law which requires the disclosure of SSNs other than those of applicants or recipients. Thus the regulations only require that applicants and recipients (including individuals included in the definition of household for FSP) furnish their SSNs.

With respect to requirements for data exchanges on other individuals whose income or resources are considered, the final rules for the public assistance programs differ. For the Medicaid program, the final rule limits the matching requirements to applicants and recipients. However, Medicaid agencies are required to verify the income and

resources of financially responsible relatives and can conduct matches on those individuals if a SSN is voluntarily furnished, even though these rules would not require such matches. The final rule for the AFDC and Adult Assistance programs require that the State agency must request data from the required sources, not only for those applying for or receiving assistance, but also for those individuals whose income or resources are considered in the determination of eligibility and the computation of the benefit, such as stepparents, sanctioned individuals, and parents of a minor parent, if the agency maintains the SSNs for any such individuals. FSP policy in regard to these types of individuals is consistent with AFDC policy. The final FSP rules clarify that IEVS data must be requested for all household members, including those excluded because of such reasons as having been disqualified for intentional program violations if such persons' SSNs are available to the State agency. That is, these persons' resources and income are treated as available to the household in their entirety or on a pro rata basis.

b. Recipients

(1) *Timeframes and action.* The proposed rules for AFDC, Adult Assistance, Medicaid and the FSP required State agencies to request information on recipients at specified frequencies from various sources. The discussion about those sources and frequencies is in section 3 of this preamble. The proposed rules also required that information received from these sources be used to determine eligibility and benefits of recipients within 20 calendar days of receipt.

A significant number of the commenters specifically addressed the issue of the 20-day timeframe for action on recipient matches. They stated such concerns as: it was not a feasible timeframe because too much action was required; verification with households and especially third parties sometimes extends beyond 20 days; ADP prioritizing was of little help; and the age of the data required a relatively long time for analysis and resolution. One commenter thought the timeframe was feasible only for eligible households and cases which were still eligible when the information was received. Commenters recommended a variety of modifications of the proposed timeframes. Many commenters suggested that the timeframe, if required, be greater than 20 days. Several commenters recommended alternative approaches such as allowing State agency

discretion, letting the Quality Control (QC) process force prompt action, and beginning the timeframe with the receipt of data by caseworkers. Several commenters asked for clarification as to what action was required within the timeframe.

Response: We do not agree with most of the suggested methodologies for setting timeframes. Allowing each State agency to designate a timeframe would be equivalent to current Food Stamp and AFDC wage matching requirements, which allow State agencies to develop their own guidelines. Federal audits indicate State agencies are not taking prompt action on all match results. While State agencies should, and in some cases do, recognize that match results can be of significant use in reducing QC errors, these audit results show there has not been prompt action on match results even with the QC incentive. Consequently we do not believe State agency concern about lower QC error rates by itself will result in prompt action on IEVS data. Finally, we do not believe that setting a time standard only on caseworker action is sufficient since this would not establish a standard for State agency program processing up to receipt of the data by the caseworkers. Processing should be accomplished promptly to avoid unwarranted delay in action.

We did, however, consider the comments on expanding the 20 day timeframe. We have modified the final rules to provide additional time and flexibility for State agency action on match results pertaining to recipients. The final rule requires State agencies to promptly initiate appropriate action on all match data upon receipt from a particular data source. The State is required to compare the match data against case record information, identify new, discrepant or unverified facts, investigate and verify information where warranted and either send a notice of intended case action or document the decision not to send one. The notice would provide the individual with an opportunity to respond and also explain his/her rights to a fair hearing. The final AFDC and Adult Assistance program regulations have been amended to emphasize that adverse action can be taken only in accordance with the notice and hearing requirements at 45 CFR 205.10.

The State shall complete appropriate action on all information items received from the data sources within 30 days, except when collateral verification sources have not yet responded to verification requests. However, action on no more than 20% of the information

items may be delayed beyond the 30-day timeframe because of third party verification which is received after that period or is not received. Upon receipt of delayed collateral verification, the State shall promptly take appropriate case action in accordance with current regulations. In no case can appropriate action be delayed beyond the time of the next case action or recertification/redetermination, whichever is earlier.

The timeframe does not apply to individuals and households whose cases have been closed by the time the data match results are received. We do believe this information on terminated cases warrants followup action, however, and we expect State agencies to identify such situations and pursue claims and other actions as required by current rules relating to information about terminated cases.

To ensure that the 30-day timeframe or allowable delay exceptions are met, States are also required to develop and maintain a tracking system to monitor adherence to these requirements. The agency shall use appropriate procedures to monitor these timeliness requirements. In addition, the timeframe requirements for recipients do not relieve the State agencies of their quality control (QC) responsibilities for the determination of erroneous payments or their liability for such erroneous payments. (Comments about QC issues in general are discussed in Section 9 of this preamble.)

We set the 30-day timeframe, as opposed to a longer one or the 20-day timeframe proposed in the NPRMs, based on a number of considerations. State agencies are currently required to act promptly on reported information about changes in recipient eligibility and benefit amounts. We believe they should also act promptly on IEVS information. We were convinced to lengthen the timeframe to 30 days because IEVS information from IRS and SSA must be requested by a single State coordinating agency and therefore match information must be disseminated to the program agency and the organizational level that will act on the information. We believe 30 days is a reasonable time for States to transmit data to the appropriate organizational level and for that level to identify and take appropriate action. The 30-day timeframe requirement applies only to IEVS information.

In setting the 30-day timeframe, we also considered the workload impact of these rules and determined the 30-day timeframe is achievable and reasonable. First, most agencies are already using quarterly State wage information and SSA benefit

information and these are not new sources of information to be processed. Second, the actual number of matches is small in relation to caseloads. For example, California matched its casefiles against unearned income reported to its tax agency and received matches on about six percent of the inquiries. We expect similar results with IRS requests. The number of matches for wage data should relate to the caseload reporting earned income. FSP has the largest percentage of caseload reporting earned income, about 17 percent. Therefore, we expect wage data matches to be less than 20 percent of requests. Third, we estimate the number of matches requiring verification with the recipient and/or a third party will be relatively small. Both unemployment compensation and SSA benefit information will be received from the primary verification source, usually without the need for additional verification. We also expect that a large number of matches from the sources will duplicate information which is already known to the agency and verification is in the case record. In these situations, no further case action is required. Similarly, we would expect a low number of wage and benefit reports from SSA.

Another consideration in setting the 30-day timeframe is the eligibility status of cases. Since the cases will be eligible when the State agency is verifying match results, the agency can use the recipient as the primary contact for resolving discrepancies. The recipient is obligated under current regulations to cooperate, subject to termination of eligibility, in providing information about circumstances. Therefore the recipient has an incentive to provide verification of match data or to assist in obtaining verification from third party sources of information.

We also recognize that the lack of complete control over third party sources of verification may prevent final action on every case within 30 days. Therefore the rules permit agencies to delay final action on up to 20% of total matches, but only if third party verification has been timely requested and not received. We expect agencies to complete the case record comparison and to request necessary verification from collateral sources early enough in the 30-day timeframe to provide these third parties with adequate time to respond. When third party verification is received after the 30-day period, we expect agencies to act promptly on the information. An agency may not indefinitely delay using IEVS information because third party

verification is not received. The agency should follow-up on earlier requests and may need to use the recipient to verify the information or to assist in obtaining verification from the third party. In no circumstances may the agency delay action beyond the next case action or scheduled redetermination/recertification, whichever is earlier.

(2) *Other individuals whose income or resources are considered.* Two commenters requested clarification of whether the requirements of obtaining and using IEVS information apply to members of the household, other than applicants or recipients.

Response: As mentioned in the discussion on applicants, the final rules for the AFDC and FSP programs require that individuals whose need, income or resources are included in the eligibility determination must be included in matching if the State agency maintains the SSNs of any such individuals.

C. Priority Action on Recipient Matches

The proposed rule required State agencies to give priority to action on IEVS data which was most likely to be useful for verifying eligibility and benefits. This priority structure would have been documented to the respective Federal agencies, including a description of how the priorities would be used, and periodically reviewed and modified as a result of experience with operation of the IEVS.

Several commenters requested modifications of these proposed provisions. One commenter recommended that the priority structure be deleted since action was being required on all matches. Another commenter recommended deletion of this requirement because in his experience all data needs to be reviewed. Other commenters requested that there be national criteria for setting priorities, possibly defined in dollars; that there be Federal oversight of priorities; and that the priorities be based on the currency of data. One commenter thought that if State agencies are allowed to act only on priority data the rule should specify that associated errors should not be used to determine the QC error rate.

Response: We have considered these comments and the final rules delete the requirement that State agencies give priority action to IEVS data which is most likely to be useful in verifying eligibility and benefits. While not required, States may develop priorities for action on IEVS data. However, both the proposed and final rules require that State agencies take appropriate action on all matches within the revised recipient timeframe.

As previously indicated, the State is required to compare the match data against case record information, determine whether further verification is necessary, investigate where warranted and either send a notice of intended case action or document that the information does not require case action. If the match data duplicates known and verified information in the case record, no further action is required. The purpose of the statutory requirements is to ensure that appropriate benefits are provided only to eligible recipients. Therefore, all new, previously unreported or updated IEVS information which may affect eligibility or benefits should be verified or investigated and required notices sent within the required timeframe.

3. Information Sources Accessed

a. General

The proposed rules required State agencies to request information from each of the various sources at specified frequencies for recipients. There was no provision for exempting any types of individuals or cases.

A number of respondents made the general comment that the specificity of the requirements for accessing information did not offer States sufficient flexibility in conducting data matching. Two commenters maintained that Congress intended that States should be allowed to determine the information that was useful. One commenter observed that the requirements would be costly and administratively burdensome on States and information available through data matching was often already in the case record. One of the commenters suggested that the Federal agencies publish guidelines for accessing these sources rather than rules requiring access.

Response: We believe that requiring all State agencies to access the several data sources is necessary to assure that all available leads about unreported and underreported financial circumstances are obtained and acted on. The authority to determine what information is useful is provided to the Secretaries of the respective departments by the statute (section 1137(a)(2)). The final rules, as did the NPRM, provide for some flexibility with respect to data bases accessed through the possible use of alternate sources, discussed in this preamble in section 3(g). We recognize that there will be costs associated with requesting information, as already discussed in Section 1(a) of the preamble. According to State experience with matching, the primary cost is

associated with follow-up on data rather than the cost of accessing data bases. Action on information from match activity which is already in the case file should result in only minimal costs to State agencies. We believe that there will be sufficient leads on unreported or underreported data to warrant the cost of managing duplicate information already available to the State. Regulations are the vehicle for establishing requirements for compliance with Federal statute and as such are the guidelines for minimal State agency action.

These rules contain the minimum requirements for accessing information for use in verification of income and eligibility. State agencies may continue current data match activities with other sources or request the information at more frequent intervals. Many States are obtaining useful information, such as motor vehicle registration, or obtaining wage or UIB data on a more frequent basis than these rules require. These rules should not be construed to mean that current data match activities should be discontinued or that more frequent matching is not allowable. With regard to the cost effectiveness of the required matches, all of the required information sources have been demonstrated to be useful in preventing incorrect eligibility and benefit amounts, either by directly offsetting costs or by helping deter nonreporting by applicants and recipients.

Guidelines and instructional material about the procedures for accessing Federal data bases have been provided, and we plan to provide more during the first several months after publication of this rule.

Another commenter proposed that the Federal agencies pilot test the use of these sources of information before publishing regulations.

Response: The statute requires IEVS implementation nationwide, not on a pilot basis. AFDC and FSP have had wage match requirements for several years. Experience with these requirements and in accessing UC and SSA benefit information has demonstrated the value of the matching required in IEVS. We believe the new source of information, IRS unearned income information, will be a useful source. The State of California found this type of information useful when it matched public assistance records against a State tax agency file of unearned income information.

One commenter believes that States should be permitted to discontinue matching against any source if State

experience demonstrates that it is not cost-effective.

Response: Experience with the IEVS will be reviewed to determine if any modifications are justified to prevent the unwarranted expenditure of administrative resources.

Another commenter suggested that a State be exempted from the requirements for accessing data if its quality control error rate remained at an acceptable level.

Response: The statute does not exempt States from matching requirements based upon a low quality control error rate, nor do we believe such States should be exempted. While QC error rate standards are the error rate levels at which State agencies avoid fiscal disallowances State agencies should strive for a zero error rate in order to assure that benefits are provided only to eligible persons and at the correct level in order to prevent misspent Federal and State funds.

Commenters also requested that they be allowed to reduce the frequency of requests and exempt certain individuals from requests.

Response: The frequencies of requests to particular data sources are discussed in the following sections of this preamble. The issue of exempting individuals from requests to certain data sources is also discussed in connection with particular sources. In general, the rules require that all applicants and recipients be referred to all data sources. We believe that the incremental costs of including all individuals is minimal. It would be more costly to identify specific individuals to exclude from requests than to include them and let the match process eliminate them by simply not returning data.

One commenter requested clarification on whether a single agency in a State must perform all matches as IRS requires that one agency submit requests for all agencies in a particular State.

Response: A single agency does not have to perform the matches other than the IRS and SSA matches. However, this may prove to be the most efficient method in many situations, since a merged file may have already been prepared for IRS and SSA purposes.

One commenter stated future enhancements to the IEVS should include a centralized pool of the Federal agencies' data to allow faster and more economical matching. Another commenter suggested that BENDEX be used as a clearinghouse for all Federal matches.

Response: We do not believe that a central pool of Federal data would provide for faster and more economical

matching than the current structure. The need to consolidate the data before it could be accessed by States would delay the information. It could save some State costs in that only one request for both IRS and SSA data would be necessary. As just noted, a merged request file may be generated anyway and State costs might not be affected at all. We do not plan to add to BENDEX the function of Federal clearinghouse. We believe that BENDEX and the IRS access procedures are as consolidated as is practical, economical and prudent from the perspective of protecting an individual's privacy.

One commenter believed that in order for the IEVS to be truly effective, the involved Federal agencies must be willing to establish an on-line automated system with State agencies to verify and obtain information.

Response: SSA and IRS have not found it cost effective to make the wage and self-employment (SSA) and unearned income (IRS) information accessible on-line for their own agency purposes. Therefore, it would not be feasible to allow States on-line access to these files. SSA has the capability of providing on-line access to benefit data. A pilot project is being conducted with Tennessee to provide wire-to-wire exchange of benefit data (see section 5). We believe that the IRS and SSA scheduled response times will allow States to make effective use of the data.

One commenter thought Medicaid's timeframes for requesting Federal data should be flexible, as are FNS' and OFA's.

Response: HCFA has modified the language on requesting data from SSA at 435.948(a)(2) and 435.948(a)(3) to parallel the language for FSP, AFDC and Adult Assistance. The Medicaid agency does not have to request SSA information yearly as proposed but must accrete applicants to BENDEX so as to receive automatic responses whenever SSA's records are updated.

b. SWICAs.

The proposed rules required that recipients (except institutionalized Medicaid recipients) be matched quarterly to State wage data from State Labor Information Collection Agencies (SWICAs). By statute, employers in each State are required to report wages quarterly by September 30, 1988, unless the State agency has an alternative system which is equally timely and effective. The proposed rule also specified certain criteria for the data available from a SWICA which is not maintained by the State UC agency.

Several commenters argued against the requirement for quarterly matching

of recipients against wage data. One commenter questioned the value of wage matching beyond the first few months of initial certification of a recipient. One commenter proposed instead to require yearly matches with very loose screening criteria and a more thorough investigation as part of the redetermination process. Another questioned the value of quarterly matches for the homebound elderly or children under age 16.

Response: The final rules retain the requirement for quarterly wage matching because we believe that there is sufficient change in employment situations to warrant matching as frequently as wages are reported. Certainly a yearly match would be too infrequent and allow excess benefits to continue too long. The general section above discussed some reasons for requiring that all individuals be matched. The value of including children and the homebound elderly is to identify wages earned by household members but reported under the others' SSN's.

One commenter questioned whether the SWICA criteria listed in the NPRM applied to UC agencies which already collect quarterly wage data. The commenter was particularly concerned with the criteria which would require the State to include the full name of the wage earner on the record and the additional costs that would be necessary if this were required of existing systems.

Response: The proposed and final criteria apply only to SWICAs which are not UC agencies already collecting quarterly wage information.

Two changes have been made in the final rules. First, the criteria are extended to another type of SWICA. We have been informed that some States may elect to meet the statutory requirement by developing a wage collection system in the UC agency but not using the system for the computation of unemployment insurance benefits. The NPRM did not cover this situation which may be limited to only one or two States. In the final rules, the criteria apply to such SWICA types since they will not come under Department of Labor (DOL) regulations in this regard. Second, the final rules require that non-UC SWICA data be made available to SSA for the purpose of administering the Title II and Title XVI programs. The DOL rules published simultaneously with these rules require this same access for SWICAs which are under UC agencies and are used for UIB computation purposes. (For consistency with other current references in AFDC regulations, the AFDC and Adult

Assistance IEVS regulations refer to UIB information as unemployment compensation information.)

Two commenters maintained that State wage data should be more current and suggested that the Federal government require more frequent wage reporting by employers.

Response: Quarterly reporting of wage data is a statutory requirement. We are interested in State agencies obtaining the data as promptly as possible and urge that, in working with UC and non-UC agencies, State agencies arrange to match as soon after the data is collected as possible. State agencies can also help assure that the data is current by arranging to use it promptly after the match is completed.

c. Unemployment Insurance Benefits (UIB)

In addition to requiring a match of applicants to UIB data, the proposed rules required that requests be made: (1) For all recipients about whom requests at application indicate non-receipt of UIB for the first three months of eligibility; (2) for all recipients who report loss of employment, in each of the three months after the recipient reports; and (3) for any recipient receiving UIB, in each month until these benefits are exhausted. For the FSP, the legislation and the proposed rule also required FSP State agencies to request and utilize any information in addition to wage and UIB information available from UC agencies to the extent permitted under section 303(d) of the Social Security Act.

Several commenters indicated that requiring the agency to do data matches for UIB information at application and for three months following application or loss of employment is unnecessary and burdensome. One commenter suggested that quarterly matching was sufficient. Several commenters questioned the value of verifying the amount of UIB monthly while a recipient reported receiving such benefits because UIB payments do not fluctuate and monthly reporting can adequately track changes.

Response: In order to determine whether an individual has applied for UIB, an agency must request the data at application or following the loss of employment. Because an individual does not have to apply for UIB immediately, it is necessary to check for three months, by which time an eligible individual generally will be receiving UI benefits.

State agencies need to continue to request UC data once the UC agency shows payment of benefits when a worker loses his or her job in order to receive leads on changes in income. UIB amounts can and do frequently fluctuate as a result of reported changes in

earnings or number of dependents. The State agency may also verify the data independently through monthly reporting or by viewing the benefit check.

One commenter believed that the regulations should specify that the State Medicaid agency may request, and the UC agency must allow, matches on applicant and recipient caseloads. One commenter recommended HCFA exempt a State Medicaid agency from the responsibility of matching UIB data.

Response: The regulations require Medicaid agencies to request and use UIB data from the UC agency when the Medicaid agency makes the Medicaid eligibility determination. (See applicability of IEVS requirements, section 1(b)(2) of this preamble.) If a Medicaid agency determines that it is useful to obtain UIB data when the eligibility determination was made by SSA, then the Medicaid agency should make the appropriate arrangements with the UC agency, including the necessary agreement. The State plan would describe the match activities the Medicaid agency will conduct in addition to the matches required by these rules.

One commenter asked whether SSA intended to match SSI files against State UIB information.

Response: The income and eligibility verification provisions of the DEFRA do not require SSA to match SSI files with State UIB benefit information. SSA is, however, reviewing the result of pilot studies in several States which matched SSI records and State wage and UIB files and may expand the use of this information in the future.

d. IRS

In addition to the match on applicants, the proposed rules required an annual match of recipients against IRS data on unearned income. A number of commenters addressed several different aspects of the requirements for accessing IRS information.

Several commenters questioned the usefulness of IRS unearned income information because it covers the calendar year and does not reflect current recipient circumstances.

Response: While IRS unearned income information covers a particular calendar year and that information is not available until about nine months following that year, it may show unreported household resources. We believe that these leads will be useful. This is especially so since there has been no other source of such data up to now.

Two commenters thought the State agencies should have to request data

from IRS on an annual basis only for recipients and not on applicants, since yearly information is sufficient for the SSI program.

Response: We require agencies to request data on applicants and recipients to determine any past and current unreported resources and to prevent long periods of incorrect eligibility. We believe that there is sufficient evidence of the need to check as early as possible on applicant resources. The SSI program has not established its permanent policy on the frequency of its access to IRS data.

One commenter, noting the amount of information on the IRS unearned income file, asked whether State agencies should request information on all recipients at one time each year or request information for a percentage of the caseload each month during the year.

Response: The final rules clarify the NPRM by specifying that the annual match will be conducted when IRS has prepared the annual tax data for matching and that State agencies would match all recipients at that time. The purpose is to make sure that the most recent IRS data is compared to information reported by the ongoing participants. State agencies would request information on all recipients at this one time. We recognize that this annual match will result in a larger number of IRS matches for one particular month than for the others. Experience does not indicate that the number of matches on unearned income is likely to overburden State resources. For example, as mentioned elsewhere in this preamble, California found a match rate of about six percent.

Medicaid agencies should include on the file for the annual match individuals whose eligibility was terminated since the last yearly match was conducted when the information would be useful in determining the correct period of eligibility or medical payment amount. The initial match of recipients to IRS data and to SSA data is discussed in section 10 of this preamble which deals with implementation.

Another commenter thought IRS information should not be used for certification or recertification purposes but only for fraud investigations.

Response: DEFRA specifically requires that the information from IRS and other specified sources be used to verify eligibility and benefits.

One commenter wanted to know whether IRS would process State tapes only once a month and whether the agencies would be provided with a schedule.

Response: As discussed in section 2(a) above, IRS has scheduled eleven monthly runs of State tapes against its national file of unearned income information. IRS will only process one tape per month per State.

One commenter asked if the State agency could obtain the IRS unearned income information from the State revenue department in the same State if the revenue department received data from IRS.

Response: No, the State agency must request the information directly from IRS. Although the State revenue department may also receive unearned income information from IRS, the Internal Revenue Code prohibits redisclosure of that information by the State revenue department to any other agency.

One commenter thought the requesting and verification of IRS data creates a duplication of match activities for Medicaid recipients between the States and SSI. When SSI must match against IRS, SSI should provide the States with the IRS information.

Response: Medicaid agencies are required to obtain IRS data only for those cases in which the Medicaid agency makes the eligibility determination. SSI will only obtain IRS data for those cases where the Medicaid eligibility is determined by SSA pursuant to section 1634 of the Social Security Act. Therefore, no duplication of match activities will occur.

One commenter wanted the data obtainable from IRS expanded to include all income sources such as tax return amounts and earnings. The large cost for developing the capability to match with IRS should result in obtaining as much information as possible. Another commenter wanted IRS data on wages, rather than requesting it from SSA, because IRS data is more recent.

Response: The Deficit Reduction Act is specific in stating only unearned income information is to be furnished by IRS. IRS has developed a process for State agencies to obtain income information at a low cost and without developing complex procedures. Unearned income has been found to be very useful by California and in the SSI program for identifying unreported resources.

e. SSA

The proposed rules required State agencies to access all available SSA data on applicants. We received a number of comments about accessing SSA data. The majority were procedural and are discussed below. The final rules contain the requirements for accreting

applicants and unaccreted recipients to SSA systems.

The preamble to the NPRM indicated the State agency would meet this requirement by using the Third Party Query (TPQY) system recently made available to State agencies or by accreting the applicant's name to the Beneficiary and Earnings Data Exchange (BENDEX) system. If the State chooses to use the TPQY system, it is also required to accrete the name to BENDEX if and when the individual becomes a recipient. BENDEX provides the State agency with pension, earnings, and self-employment information (only SSA benefit data are available through TPQY) and creates a record which generates an automatic response to the State agency whenever updated information becomes available (which TPQY does not do).

One commenter thought the statement in the general preamble that the TPQY system should only be used in critical situations conflicts with SSA's standard TPQY agreements. The commenter suggested TPQY requests were the most effective way to obtain benefit information on new applicants.

Response: Article V of the model agreement for TPQY states that TPQY should be used only if the data is unavailable through BENDEX. State agencies may, but are not required, to use TPQY at application, if the BENDEX system will not provide a response timely enough to use in the initial eligibility determination process. The State agency must also maintain the necessary controls to ensure that a request is made to SSA either through BENDEX or TPQY on each applicant, and that all reports from SSA are investigated.

One commenter wanted to know whether SSA agencies will still be able to obtain information from the Master Beneficiary Record (MBR).

Response: State agencies will still be able to access the MBR. Under IEVS, they are required to request and use SSA Title II benefit data, and BENDEX is the data exchange system between States and the MBR. The BENDEX system provides current data on the status of social security benefits and also provides automatic reporting of benefit changes.

One commenter wanted to know how SSA will make "pension and related data" available, since it is not available on State Data Exchange (SDX) or BENDEX.

Response: In September 1985, SSA began providing pension data with wage data. The data includes both the amount of pension paid for a calendar year and the name and address of the payer of

the pension. Since the pension data will be supplied with wage data, State agencies do not need to use any special procedures to obtain this new data.

Two commenters were concerned that SSA files contain inaccurate and discrepant information. One of these commenters suggested that SSA files (as well as other data sources cited in these rules) be cleared of all internal discrepancies before they are forwarded to another agency.

Response: Data bases, especially ones as large as those maintained by SSA, usually contain some inaccuracies and discrepancies. The Federal agencies are aware that States have found some problems with SSA data. Although we do not believe the scope of these problems warrants any effort so great as the commenters suggest, we would stress two factors. First, except for UC and SSA benefit data, the information obtained through IEVS will be generally treated as a lead for further verification activity. SSA earnings data will almost always need to be verified. Second, if a State receives what they believe is incorrect information, no adverse action should be initiated until the discrepancy is resolved. We would expect, however, if a pattern is noted, that SSA be contacted so that corrective action can be taken.

One commenter believed that net earnings from self-employment will not be useful since the assistance programs have different allowable deductions in calculating net self-employment income.

Response: The information obtained would be used as a lead for unreported self-employment income.

One commenter questioned whether the SSA wage information match is redundant, since the SWICA information is much more current.

Response: SSA wage data, while less current, can give leads to employment not reported to a given State's SWICA, such as employment in other States and self-employment.

One commenter wanted HCFA to clarify that section 1634 State Medicaid agencies are not required to match against the SDX.

Response: As discussed in section 1(b) of this preamble, Applicability of IEVS Requirements, Medicaid IEVS regulations pertain only to determinations made by the State Medicaid agency. A Medicaid agency with an agreement under section 1634 of the Act for SSA to make Medicaid determinations and redeterminations for SSI applicants and recipients does not currently have to request SDX information on SSI applicants and recipients for eligibility purposes.

Medicaid agencies may access such information for third party liability (TPL) purposes. We are currently considering mandating such matches for TPL and any such requirement would be proposed through the rule making process.

One commenter wanted data from the SSA benefit applications to be made available.

Response: The statute specifically identifies the information SSA can provide. General application data is not included.

f. Interprogram and Interstate Exchange.

The proposed rule required that all programs in the IEVS exchange income and eligibility information with each other in accordance with interstate and intrastate agreements in effect and as appropriate to the requesting program's verification and eligibility determination needs.

One commenter believed we ought to clarify regulations to show that an agency has access to another agency's data without necessarily providing data to that other agency.

Response: We agree with the comment and have modified the final rules where necessary to clarify this issue. An agency may request information from another agency in the IEVS on the basis of its self-determined need and subject to an agreement with the other agency, reached on that basis. We expect the requesting agency to define the data to be provided, subject to the provider's disclosure limits. State agencies are encouraged to request data from adjacent jurisdictions and other States where experience indicates the data would be useful. Each Medicaid State agency must submit a plan as part of its State plan indicating the information it intends to request from other State agencies (42 CFR 435.948(a)(6)).

Three commenters thought access to the State Employment Security Internet system for the IEVS matches would be very helpful. Some commenters expressed concern that there were plans for such requirements, perhaps on a national scale.

Response: The Internet system is still under development and its potential uses are still being evaluated by the Department of Labor. The rules do not require State agencies to use the Internet system. We would note, however, that nothing in these rules would preclude access to this system. In a recent pilot project the Office of Child Support Enforcement found Internet to be an effective means of information exchange.

One commenter noted that current regulations authorize the IV-D Child Support Enforcement agencies to access out-of-State data bases for AFDC and Medicaid, but not for FSP. The commenter feels there is no reason to treat the FSP differently.

Response: FNS has added the Child Support Enforcement agencies to the list of programs with access to FSP case information on an interstate basis. The proposed rules should have authorized such access, as provided by statute.

One commenter thought that developing data sharing capacity with out-of-state agencies, as well as reimbursement for the data, will present difficult compliance problems.

Response: To keep problems with data sharing between agencies in other States to a minimum, all the final rules have the identical requirements for written agreements and safeguarding of information. This should help agencies enter into data sharing agreements. As discussed in section 7 of this preamble, formats and model agreements are being developed for the exchange of information between State agencies. These materials should make the development of new matches easier and minimize developmental costs and the associated reimbursement.

g. Alternate Sources

The final rules retain the NPRM provision that a State agency may obtain data from sources other than those specified in regulations if it can demonstrate to the respective Secretaries that the alternate source furnishes data as timely, complete and useful as data from the source specified in regulations. The Departments of Health and Human Services, Agriculture and Labor will consult before approving an alternate source. In the preamble to the NPRM we specifically requested comments on possible alternate sources and criteria for evaluating these sources.

Two commenters suggested the Federal agencies should be flexible in permitting States to substitute useful sources of data such as bank matching for the required IRS match. Another commenter asked the Federal agencies to make available the criteria which would be used to evaluate a State's request. Another commenter asked that the criteria should allow for an alternative wage data source which would have more current information than is available from UC agencies. Finally, one commenter did not believe that alternate sources would provide timely data or provide data on a sufficiently frequent basis.

Response: To evaluate a State agency's proposal to use an alternative

source we would apply the standards contained in the final rule. The source (or combination of sources) would have to be as timely, complete and useful as the required source.

4. Independent Verification

The NPRMs for all three agencies incorporated the legislative requirements for independent verification of IRS unearned income information. All of the programs were guided by the House Conference Report language calling for the independent verification of the IRS unearned income information relating to the amount of resource or income involved, whether the applicant or recipient actually had access to the resource or income and the period of actual access to the resource or income. The final rules retain this requirement. With respect to other information obtained through the IEVS, the NPRM for the FSP stated explicitly what types of IEVS information would and would not be subject to independent verification. While not as explicit, the NPRM preamble stated that the AFDC, Adult Assistance and Medicaid programs expect independent verification of IEVS information where necessary. In response to comments, the Medicaid, AFDC, and Adult Assistance final rules have been modified to explicitly require verification, if determined appropriate based on agency experience. These requirements are discussed further in response to comments below.

a. General Requirements

Several commenters requested further information on what is involved in the independent verification process.

Response: Independent verification is an inquiry about a possible discrepancy between information reported from various sources and that reported to the State agency by the applicant or recipient. Data from IEVS is the starting point for the inquiry. Independent verification, thus, is the means of gathering information which will enable the caseworker to determine actual circumstances and decide whether or not to send a notice of adverse action. Because IEVS data often pertains to past periods relative to the time period the caseworker receives it, the process of independent verification would include an inquiry about the relevance of the data to current circumstances. Independent verification can be accomplished either through the applicant or recipient or through a third party source such as the employer or bank which reported the information.

One commenter believed that there should be no independent verification requirements, another believed that all IEVS information should be independently verified, and another believed the rules should be consistent.

Response: Since DEFRA requires independent verification of IRS data, the rules must implement that requirement, and the final rules retain the NPRM provision in this regard. On the other hand, to require independent verification of all IEVS information would in some instances be unnecessary. For example, we expect that if an inquiry to BENDEX shows receipt of social security benefits which were not reported by a recipient, a State would issue a notice of adverse action without independently verifying the information since the best source of information, SSA files, had already been used. As noted above, the Medicaid, AFDC and Adult Assistance final rules have been modified to require verification, if determined appropriate based on agency experience. We believe that the final rules of all three programs are now consistent with respect to independent verification.

In relation to the FSP proposed rule, two commenters requested a clearer definition of the proposed distinction between IEVS data considered verified upon receipt and data considered unverified upon receipt. One commenter requested that State agencies be allowed to independently verify IEVS data considered verified upon receipt. The reason cited for this request was that sometimes SSA benefits and UIB data need further verification before a case action can be initiated.

Response: The final FSP rules revise the language in the NPRM so that the term "considered" is used with respect to both "verified" and "unverified." The final rule also provides that if the State agency has information that indicates that the IEVS-obtained information which would be generally considered verified upon receipt is questionable, then the State agency must independently verify it. State agencies are always free to independently verify any data obtained through IEVS. Receipt of generally considered unverified IEVS information, in conjunction with other case information, may also provide a sufficient basis for a notice of adverse action. The final FSP rules provide that in such situations State agencies may proceed without independent verification, except where the information is from IRS. We believe that this approach enables State agencies to make sure that notices of adverse action are based on appropriate information

and do not violate any due process considerations. Finally, we would note that a typographical error is corrected in the FSP rule in the second sentence of § 273.2(f)(9)(iii): "for" is changed to "from".

One commenter suggested that the rules should require that the applicants and recipients be contacted as part of the verification of IRS unearned income information.

Response: In permitting the State agency to verify information with either the third party source or the individual/household, the final rules parallel the Conference Committee Report on the legislation. Verification will often be accomplished through contact with applicants and recipients, but we believe that the option of contacting a third party is necessary in cases where the recipient fails or refuses to cooperate, the State agency believes it to be in the interest of the investigation of potential fraud or when other factors indicate that a third party contact is preferable.

Another commenter asked how the requirements for verifying IEVS data related to current procedures on verification of information from parties identified by the recipient, such as bank and employers.

Response: Verification of IEVS data does not replace the verification procedures used in the several programs as part of the eligibility determination. Verification of the IEVS data supplements that verification since it pursues information provided by parties other than the household.

b. Collateral Contacts

The FSP proposed rules eliminated the current requirement that households provide the names of third parties (collateral contacts) or give the State agency prior permission to contact third parties to obtain independent verification.

Several commenters objected to the FSP proposal on collateral contacts, arguing that: direct contact with employers or landlords jeopardizes household employment and housing arrangements; the policy violates the due process provisions of the Fourteenth Amendment; and it conflicts with household privacy rights of section 11(e)(8) of the Food Stamp Act. Two public agencies argued that the proposed policy would allow State agencies to contact everyone and anyone about facts relating to a food stamp recipient's participation, and that contact with the household is necessary in order to resolve discrepancies. One commenter argued that FNS should provide guidance for a method of

resolving discrepancies when the household cannot provide verification of wages and the employer holds an anti-welfare attitude. The commenter argued that there should be a third alternative to forgoing benefits or allowing disclosure and thereby jeopardizing employment. Three commenters supported the proposed policy on the grounds it provides State agencies with the flexibility they need to prevent fraud.

Response: The final FSP rule remains unchanged, thereby eliminating the requirement that the State agency obtain prior approval for particular collateral contacts. As discussed elsewhere in the preamble in connection with action on recipient households (Section 2, Access and use of Information), State agencies have the opportunity to contact households and because of their eligibility status may often find this the most advantageous approach. The U.S. Department of Agriculture (USDA) does not see that this policy will affect due process since the households would be given a notice of adverse action if information from a third party indicates a basis for a case action, and fair hearings would be available before benefits would be affected. Without this policy, households which have intentionally failed to report wages or resources could refuse to provide the information themselves and therefore be terminated from the program. Having been terminated and then not allowing contact with an employer or bank, they could prevent the development of information which could be used for fraud investigations and prosecutions relating to past benefits. With respect to Section 11(e)(8) of the Food Stamp Act, as stated in the preamble to the NPRM, USDA believes that the notice at application and periodically thereafter, which DEFRA requires, fully satisfies the purposes of the privacy interest established by the Food Stamp Act. The notice at application comes in advance of any actual contact with employers, banking institutions and the like, and provides the applicant the opportunity to forgo program benefits rather than permit disclosure of the fact that the application has been made to persons not involved in the administration or enforcement of various benefit programs. Furthermore, USDA does not believe that the policy opens up the verification process to everyone. Current rules continue to state several examples of acceptable collateral contacts qualified by the clause "who can be expected to provide accurate third party verification."

USDA and the other Federal agencies are concerned about the potential problem of repercussions on working applicants and recipients when employers discover they are receiving public assistance. We would point out there is nothing to prevent households from informing caseworkers of their concern about this matter at certification or when they change jobs. If they correctly report income, the IEVS data should not indicate a discrepancy for follow-up.

5. Social Security Numbers (SSNs): Furnishing, Using and Verifying

DEFRA requires each applicant for and each recipient of AFDC, Adult Assistance in the territories, food stamps, UC, and Medicaid to furnish his or her SSN(s) as a condition of eligibility.

Current rules for FSP and AFDC already require the furnishing of SSNs. These regulations implement the new statutory requirement to furnish SSNs to the Adult Assistance programs and to the Medicaid program. HCFA proposed, for recipients who became eligible before April 1, 1985, that the State Medicaid agency was required to obtain SSNs when the agency made a redetermination or by April 1, 1986, whichever came first. As discussed in section 2 of this preamble, the regulations for all programs require the use of the SSN to associate information on applicants and recipients for the required matches. The proposed rules required all Medicaid, AFDC, FSP and Adult Assistance Program State agencies to verify applicant and recipient SSNs.

a. Implementation

One commenter recommended that the statutorily required implementation date of April 1, 1985 for obtaining SSNs on applicants should be adjusted to give the State Medicaid agencies an adequate timeframe in which to meet the requirement. Another commenter wanted to know if an agency had to have an agreement with SSA regarding obtaining SSNs.

Response: HCFA does not have authority to delay the Medicaid requirement that State agencies start obtaining SSNs for applicants as of April 1, 1985 because the statutory provision is self implementing. It is a fairly simple requirement to implement, requiring only that an agency tell an applicant or recipient that he or she must furnish an SSN in order to be eligible for benefits. HCFA's proposed language in 42 CFR 435.910 may have misled the commenter into believing the State agency has to obtain the SSN for

the applicant or recipient, rather than from the applicant or recipient. By law, it is the applicant (or recipient) who must furnish the SSN. HCFA is revising the regulation to conform more closely to the law and the FSP and AFDC regulations and to clarify that the Medicaid agency must require the individual to furnish the SSN. Currently, some agencies assist individuals with obtaining SSNs; the revised language is not to be construed as a requirement to discontinue this practice. A State agency must have an agreement with SSA if the agency assists an individual in obtaining an SSN by submitting an SSN application form (SS-5) on his behalf.

HCFA indicated in the proposed rule that the State did not have to obtain an SSN for a recipient until the time of redetermination or April 1, 1986, whichever was earlier. It was subsequently determined this section of the legislation was self-implementing without regulation. As a result, HCFA informed all Medicaid agencies in Program Memorandum 85-3—State Plan Preprint to require all current recipients to furnish SSNs beginning April 1, 1985.

Four commenters to HCFA believed children in foster care or receiving adoption assistance should be exempt from having to furnish SSNs, as there are several problems associated with this requirement. It raises concerns about confidentiality; the number may not have been obtained before the case is terminated; adoptive parents may apply for a second number; in many cases, the child has been abandoned or removed from his or her natural parents and information necessary to acquire an SSN cannot be obtained; or the child may need emergency medical care.

Response: DEFRA does not exempt any applicants or recipients of the subject programs except some newborns (see comment and response immediately following) from having to furnish an SSN. Although the furnishing of the SSNs is a new requirement for Medicaid, the other programs have had the requirements and their experience should be helpful to the Medicaid agencies. Medical assistance cannot be denied if an individual needs emergency care and has not previously applied for an SSN.

Four commenters questioned whether SSNs have to be furnished for newborns; and one asked whether a newborn had to be enumerated retroactively if the birth is not reported for three months or more.

Response: The only exception to the requirement to furnish an SSN for Medicaid eligibility relates to newborns. DEFRA amended section 1902 of the Social Security Act by adding a

paragraph that mandates a newborn child be deemed to have filed an application and have been found eligible for Medicaid if he or she is born on or after October 1, 1984 to a woman who is eligible for Medicaid on the day of the newborn's birth. This deemed eligibility lasts for a year as long as the mother remains eligible and the child remains a member of the mother's household. Because the child is deemed to have filed an application and eligibility is linked to the mother's eligibility, the IEVS requirements do not apply to the newborn. Persons who are deemed applicants do not fall within the scope of the IEVS provisions for furnishing SSNs. However, if the child is to remain eligible after one year of age, an SSN must be furnished on his or her behalf. As long as the newborn is deemed eligible, the newborn does not have to be enumerated retroactively.

b. Multiple SSNs

One commenter wanted to know whether it would be necessary to keep on file more than one SSN per person. One commenter wanted to know if a State agency has to verify multiple SSNs.

Response: Yes. If a person has two SSNs, for example, he or she may be using both and it will be necessary to obtain data filed under both SSNs. The proposed rules for FSP and AFDC were clear that multiple SSNs were to be verified and used but the proposed Medicaid rule was not. HCFA has clarified its regulations, at Section 435.948(a), to indicate this and to indicate that all SSNs of a given individual must be used. HCFA has also revised Sections 435.910(g) and 435.920(b) to clarify that all SSNs must be verified.

c. Verification of SSNs

A number of comments related to the requirement that the furnished SSN must be verified. One commenter believed the requirement that an agency must verify SSNs goes beyond the authority of the statute. Several commenters wanted clarification about whether an "official document" may still be used (as permitted by current regulations) to verify SSNs. One commenter believed deleting the requirement that an applicant or recipient must show proof of his or her SSN is a mistake. One commenter urged that only verified SSNs be utilized in the data matching; in that agency's experience, use of unverified numbers and the first three letters of the last name resulted in mismatch rates of 30 percent. Several commenters believed (1) the SWICA, (2)

the UC agency, or (3) SSA should be required to verify the SSN, not the State public assistance agency.

Response: DEFRA requires that the applicant furnish his or her SSN(s) for the purpose of permitting the authorized program to associate records on that individual with the SSN. Requiring verification of the SSN ensures that the SSN used for this purpose is for that individual. Although not specifically mentioned in the statute, verification is necessary to ensure the proper and efficient administration of the matching requirements and to help prevent disclosure of information on individuals who are not applicants or recipients of benefits under these programs.

A State agency may continue to accept a social security card or other official document to meet the requirement that an applicant or recipient furnish an SSN or SSNs. Since these regulations do not allow eligibility determinations to be delayed awaiting SSN verification, furnished SSNs will need to be used for the initial applicant matching. Because an individual may furnish a duplicated, false, or nonexistent SSN or have multiple SSNs, these rules require all furnished SSNs to be verified so the agency will maintain and exchange information on correct SSNs.

We are aware there could be mismatches based on unverified numbers furnished by applicants, but matches should be conducted on all numbers furnished by applicants as the numbers may have been used even if erroneous and unverifiable. State agencies are not required to verify SSNs of applicants determined ineligible.

As discussed further in subsection (d) below, SSA generally verifies the SSN of individuals receiving Title II or Title XVI benefits. An SSN received on such individuals through BENDEX or SDX can be considered verified. It is not cost effective to have all SSNs in a SWICA, UC, or SSA data base verified at entry, as only a very small percentage of these individuals actually apply for public assistance benefits.

d. SSA Verification Systems

One commenter stated that the BENDEX system does not cross refer the claim number under which a person is drawing benefits to that person's own SSN. One commenter believed SSA's Supplemental Security Record (SSR) and MBR records should have a new field to indicate whether a "cross reference SSN" has been verified.

One commenter questioned whether all SSNs received from SSA via the BENDEX are verified, except for individuals receiving benefits on their

own numbers and said that not all SSNs on SSI recipients have been verified as some applicants are placed in pay status through default without the SSN being verified. One commenter believed SSNs of applicants should not have to be verified because BENDEX verifies only the SSNs of current claimants, and the verification on non claimants will rarely be received within the application period. One commenter asked whether the three means of verifying SSNs mentioned in the general preamble must be followed in the order presented (i.e., BENDEX, SDX, TPQY).

Response: The BENDEX system does cross refer the claim account number on which the person receives benefits to the person's SSN if the SSN is in SSA's records (See BENDEX Handbook, POMS, SM 10801.245.B). In a small percentage of cases a beneficiary's SSN is not on SSA's records and SSA is planning to correct these situations.

It is true that not all SSNs on the BENDEX are verified. If an individual is receiving benefits on another's account number, the individual's SSN will have to be separately verified according to SSA instructions.

As discussed in section (c) above, we do not require SSNs to be verified before the agency requests and uses IEVS data and do not allow eligibility determinations to be delayed for SSN verification. However, if the BENDEX, SDX or TPQY processes are used to verify the SSN, prompt verification can result.

If an applicant's SSN is not verified through these processes, the SSN verification system must be used. A redesign of the SSN verification system is underway and when that is in place, verification of SSNs should not exceed three weeks.

There is no required order for using the BENDEX, SDX, TPQY, and SSN verification system for verifying SSNs. As stated in Article V of the model agreement on TPQY, TPQY should be used only if the data are unavailable through the BENDEX or SDX. However, the SDX and BENDEX systems can be used only to verify the SSNs of SSA beneficiaries. The SSN verification system has to be used to verify all other SSNs.

With respect to verification to SSNs, the proposed FSP rule contained a statement that an SSN would be considered verified if an inquiry to SSA for certain types of information resulted in a response associated with the SSN. To avoid possible conflict with SSA instructions and to ensure consistency with Medicaid, AFDC and Adult Assistance rules, that statement has been eliminated from the final FSP rule.

e. Quality Control (QC) Errors

One commenter to HCFA believed that until the States have the IEVS in place, QC should continue to consider missing SSNs as technical errors and once the systems are in place, the absence of an SSN should be treated as a QC error only when a match with the number would have affected the recipient's eligibility or benefits. Another commenter thought a lack of an SSN or an incorrect SSN should never be a QC error.

Response: HCFA does not agree with these comments. The law requires as a condition of eligibility that every applicant and recipient furnish his or her SSN or SSNs. Therefore, anyone who has not been determined otherwise eligible but who has not furnished an SSN (except in the case of an applicant who applies for an SSN at the same time he or she applies for Medicaid and whose SSN has not yet been received by the time the period for determining eligibility has run out) has not met the full conditions of eligibility and so is not eligible. However, missing SSNs will remain QC technical errors until HCFA deletes SSNs as technical errors through regulations.

f. Other Issues

One commenter urged a totally automatic (on-line) SSN enumeration and verification system, claiming it would significantly improve all SSN-related processes.

Response: SSA is working with Tennessee on a pilot project to provide wire-to-wire exchange of benefit data which will also verify the SSNs of clients who receive social security or SSI payments. Once the pilot is running successfully, SSA expects to offer the same service to other States. On-line access to the SSN verification system is not feasible at this time.

One commenter maintained that States should be allowed to send completed forms to the local district office to be keyed in rather than requiring the forms be mailed to Wilkes Barre, Pennsylvania, because of time problems.

Response: SSA is not pursuing such a system at this time. It is currently more cost effective to process such SS-5s in a central location.

One commenter wanted to know the difference a Social Security Account Number and an SSN. Most of the local agencies use the former term only when benefits are being paid on a social security claim.

Response: The two terms (Social Security Account Number and Social

Security Number) are synonymous in Federal usage. When referring to the number under which benefits are paid, SSA uses the term "social security claim number".

A commenter noted the FNS preamble language on SSA direct notification to State agencies of newly issued SSNs was different from the other preambles.

Response: FNS believes these direct notification procedures will simplify the verification process for State agencies that do not have enumeration agreements with SSA and will limit the burden involved in acquiring an SSN for the household. OFA believes that regulatory language is not necessary for the AFDC program because all State AFDC agencies without enumeration agreements currently receive direct notification of newly issued SSNs for applicants and recipients through a validation tape provided by SSA.

Several commenters to FNS supported elimination of the "month and 30 day" limit on participation after application for an SSN. One commenter objected to the proposed indefinite participation allowed pending receipt of the SSN.

Response: FNS has decided to retain the proposed language allowing indefinite participation in order to prevent adverse actions as a result of factors outside of the control of the household.

FNS received five comments on the proposal to allow participation pending application for an SSN with good cause. Several of the commenters supported this general approach. One State agency recommended such participation be limited to 90 days. A commenter recommended such participation be limited to the first certification period. Two commenters suggested the section needed editing to make it clearer.

Response: FNS has decided to retain the proposal. Setting limits on participation pending application for an SSN with good cause could have adverse effects on a household as a result of factors outside the control of the household. OFA received comments on this topic in response to a Notice of Intent to Develop Regulations, jointly issued with FNS on February 19, 1985 (50 FR 6970). These comments are under consideration and will be addressed in separate rulemaking. HCFA also plans to address this issue in future rulemaking. Minor editorial changes in the FSP rule have been made for clarification.

6. Additional Procedural Requirements

a. Routine Notification

DEFRA requires that all applicants and recipients be notified that

information available through the IEVS system will be requested and utilized. The notification is to be given at application and periodically thereafter.

FNS proposed that the notification be a written statement on the FSP application or on a separate sheet. OFA and HCFA proposed only that the initial notice be provided in writing at application. For AFDC, Adult Assistance and FSP the periodic notification for recipients would be at recertification or redetermination. HCFA proposed to require the periodic notification to be at least yearly and that for current recipients (i.e., those eligible at time the proposed rule was published) the initial written notification could not be later than April 1, 1986.

One commenter was concerned about the varying definitions of the word "periodically", as used to indicate how often an agency must notify recipients of the IEVS and the uses of the information and recommended the Federal government state the minimum frequency.

Response: The definition of "periodically" is based on existing program case processing cycles. AFDC and Adult Assistance require a redetermination every six months. FSP recertifies at the initiation of new certification periods which vary according to household circumstances. Medicaid agencies must redetermine the eligibility of Medicaid recipients with respect to circumstances that may change at least every 12 months. We believe it is administratively easy to provide notice to recipients at these intervals and provide recipients sufficiently frequent notice about the use of IEVS. State agencies should also be aware that there is no prohibition against developing a generic notice which could be used for recipients in the three programs.

One commenter asked that all agencies specify the notice be in writing. One commenter wanted to know whether the notice to applicants and recipients had to be specific as to exactly with whom the agency would be doing matches.

Response: The notice to applicants and recipients must be written and must notify the applicant or recipient that income and eligibility information may be obtained using his or her SSN(s) and will be used in the eligibility and payment amount determination. The notice must, at a minimum, indicate the types of agencies included (e.g., unemployment compensation agencies). This will allow the State agencies the flexibility to match with covered agencies in the State and in other States while affording the necessary protection

of the individual's right to know how information about him is being used.

The FSP application form is being revised to identify other programs with which information will be exchanged and to notify households that other persons and organizations may be contacted to verify income and eligibility.

One commenter requested that FSP households be notified of how their casefiles are protected from unauthorized disclosure and that State agency manuals contain the detailed disclosure rules of the agencies providing information.

Response: Information about disclosure limits for the FSP is contained in program rules, copies of which are located in local offices as required by current rules. FNS believes this should be sufficient notice about disclosure rules. With respect to providing access to the source agencies' disclosure rules, FNS believes no useful purpose would be served by having those agencies' rules in State manuals since the knowledge of them would not enable households to determine if abuse had occurred. All three Federal agencies do believe that State agencies should obtain assurances from provider agencies that their ADP processing methods prevent providers from recording what recipient names and/or SSNs are processed and that individuals having access to such information are bound by the disclosure rules of the various programs. The final rules for Medicaid and FSP are modified accordingly. The existing AFDC and Adult Assistance program rules at 45 CFR 205.50(a)(2)(i) provide adequate protection in this regard by requiring that information only be released to agencies which are subject to the same standards of confidentiality as the State agency.

One commenter wanted to know whether we had considered allowing State agencies to give recipients a five-day, rather than 10-day notice of proposed adverse action; it would allow agencies to act more quickly to close cases if warranted (for example, in cases of fraud).

Response: We do not believe individuals would have adequate notice if the time frame were shortened, and any savings would not justify threatening an individual's right to appeal a proposed adverse action.

b. Notice of Expiration or Adverse Action

Under the proposed rules, the applicant or recipient had to be notified of any planned adverse action and had

to be given the opportunity for a fair hearing. FSP proposed rules also included a provision under which households which failed to respond timely to State agency requests for information would be sent a notice of expiration of their certification period. OFA and HCFA required only that a notice be sent prior to any intended action.

Twelve commenters addressed this issue, several arguing the FSP notice should be a notice of adverse action to forestall continued overissuance, and several others arguing it should be such a notice because the proposed notice violated due process.

Response: FNS agrees that in some instances a notice of adverse action could forestall continued overissuance at least as promptly as a notice of expiration of the certification period. FNS has no way to determine how frequently the use of notices of adverse action could forestall overissuance more effectively than notices of expiration, but certainly in some cases the former notice would be more effective. While the preferred-type of notice may not be clear, if a notice of adverse action is used and the fair hearing upholds the State agency, then the overissuance is recoverable. For this reason, a notice of adverse action may result in program savings. More importantly, the concern of commenters was that the guarantee of continued benefits pending a fair hearing under a notice of adverse action was not provided if a notice of expiration was used. While the Department continues to believe that most requests for information will be responded to by the household without the need for a fair hearing, we concede that in the event of an irreconcilable dispute, only the notice of adverse action would permit the prior allotment level to continue. Therefore, the final rule replaces the proposed use of the notice of expiration with a notice of adverse action when a household does not respond timely to a State agency inquiry about IEVS information. Moreover, use of an adverse action notice in these circumstances is consistent with the approach used in AFDC, Adult Assistance and Medicaid.

c. Safeguards

The final rules are identical to the NPRM in requiring each program to protect the confidentiality of the information due to the sensitive nature of information about individuals. DEFRA requires each State agency to institute adequate safeguards to assure (1) that information is made available only to the extent necessary to assist in the valid administrative needs of the

program receiving the information and that unearned income data from IRS is exchanged only with those agencies authorized to receive it; and (2) the information is adequately protected against unauthorized disclosure for other purposes. The NPRM proposed to standardize requirements and procedures for safeguarding information through agreements between providing and receiving agencies.

One commenter noted that the IRS publication entitled "Tax Information Security Guidelines for Federal, State and Local Agencies", which was mentioned in the preamble to the NPRM, prohibits States from furnishing confidential Federal tax information to a political subdivision. The commenter believes it will be very difficult for State-supervised programs to comply with this provision. Another commenter noted that regulations on confidentiality appear to require that each income maintenance worker must sign a separate confidentiality statement which would create a burdensome paperwork requirement and recommended that States should be given the option of devising an alternate method for assuring the protection of confidentiality.

Response: DEFRA explicitly requires IRS to disclose unearned income data to Federal, State, or local agencies administering the specified programs. The IRS Revenue Procedure 85-21, issued April 8, 1985, notifies these Federal, State and local agencies of the manner, time and place for obtaining the unearned income data. The "Tax Information Security Guidelines" were revised in May, 1985, to reflect the DEFRA changes in law. Neither program regulations nor IRS guidelines require each income maintenance worker to sign a confidentiality statement.

State agencies will be required to affirm that all individuals having access to IRS information have been informed of the safeguarding requirements and the penalties for unauthorized disclosure.

One commenter stated it was doubtful that State agencies have the existing security arrangements required to protect IRS tax information.

Response: We believe that extensive modification to existing State security procedures should not be necessary. State public assistance agencies are, and have been for many years, required by Federal law and regulations to safeguard personal data against unauthorized use or disclosure. Information to be safeguarded includes individuals' names, addresses, amount of assistance, social or economic

conditions, wages, agency evaluations, and medical data. Further, States have Privacy Acts which require safeguards. All of these requirements (which are comparable to the IRS requirements) must be adhered to by the public assistance programs. States have considerable experience in implementing the IRS guidelines for securing tax data because State taxing agencies currently have access to IRS tax data and must follow these guidelines. The Federal agencies will work with State agencies to help ensure compliance with the IRS guidelines.

One commenter thought the Federal agencies should have compatible wording in their regulations on safeguarding information and urged a single publication regarding the requirement.

Response: All the Federal agencies have similar safeguarding requirements, but since they have different program needs and procedures it is not feasible to publish a single standard. Such a standard would be too general and would not be sufficiently informative concerning what data may be released or how such information should be protected. However, we are concerned about the potential for unauthorized disclosure and do intend to publish common guidelines that will enable States to develop and maintain adequate safeguarding procedures. The final rules have been amended to require State agency adherence to these guidelines when they are issued.

Several commenters thought FNS had deleted paragraph 272.1(c)(2) which provides households access to their casefiles.

Response: The NPRM inadvertently did not redesignate the paragraph as 272.1(c)(3). This is done in the final rule.

d. Agreements

The NPRM extended to the Medicaid, Adult Assistance, and UC programs the current requirement for AFDC and FSP that agencies must enter into written agreements concerning the procedures for requesting and providing wage information and added for AFDC, Medicaid, Adult Assistance, and FSP the requirement that State agencies execute such agreements with IRS.

The final rules are virtually identical to the proposed rule except for a new requirement that each agreement with a SWICA and UC agency (which in most States are one and the same) must accept and process requests for wage and UIB information no less frequently than twice per month. This is necessary in order to conform with the new requirements for access and use of

information for applicants which require the State agency to request information at the first available opportunity. For the State wage and unemployment benefit information, this first available opportunity must occur at least twice per month. We believe this provision will ensure that information on applicants will be obtained without delay and used, whenever possible, in the initial determination of eligibility.

One commenter asked whether the designation of agency officials with authority to request data was to be by title or by names and suggested the use of titles because of personnel changes.

Response: We agree that titles or positions should be specified rather than names and we have modified the final regulations where necessary.

One commenter thought the requirement for interagency agreements was burdensome and unnecessary because the agreements would not be legally binding contracts. Commenters had difficulty with the requirements concerning interstate agreements between State agencies because of the potentially high number of agreements. Two commenters suggested the use of a standard agreement for everyone to sign. Another commenter stated that if States were to use BENDEX and update it regularly, it would be adequate to address the relatively rare instances of interstate fraud and would obviate the need for most interagency agreements. A commenter stated that delays would occur while agreements were executed. One commenter wanted to know whether an agreement would be necessary when an agency in another State requests information. One commenter wanted to know how long agencies would have for obtaining agreements, since there were no data formats to follow.

Response: Regardless of whether the agreement between two agencies is a contract, it is necessary to document the arrangements State agencies have made to provide and obtain data. The items specified are those which we believe are the minimum about which parties to data exchanges need to agree in order to effect exchanges efficiently, assure both the parties and the Federal agencies that data is properly safeguarded, and assure that any reimbursement of costs is appropriate. Model agreements are being developed and will be made available to States with the instructions for using standardized formats as described in Section 7 below; their use should help State agencies expedite arrangements for data exchange. Since many such agreements are already in place, there should be many situations where the negotiations involve a limited

number of issues. With respect to interstate matching and BENDEX, the rule does not set standards for interstate matching because we believe that State agencies should examine where such matching is needed, one factor being the use of BENDEX. With respect to potential delays pending the execution of agreements, we expect that data exchanges will be conducted using existing procedures until new agreements are signed. There must be an agreement between any two agencies (or the State or States on their agencies' behalf) before data may be released.

One commenter asked whether the requesting agency could specify in the agreement with the provider agency a minimum response time.

Response: The final rules for AFDC, Adult Assistance and Medicaid, as did the NPRMs, provide that the agreements specify the timing of the response. Through an oversight FSP rules did not mention the timing of responses to requests, and the final rules include such a provision. This and the other provisions of the agreements are minimum requirements. State agencies can add others. We would note, however, that the schedules for requesting and providing information are subject to negotiation and agreement among the parties involved. The Federal agencies do not plan to set standards in this area other than ones which derive from the required frequencies of access to the various data sources.

One commenter asked if agreements were necessary among programs which are administered by an umbrella agency. Another commenter wanted to know if each agency must request information from the source agency.

Response: Yes. An agreement is necessary for each data exchange agreement between agencies even if the programs are administered by an umbrella agency. However, States may use standard language for all agreements. Except for the IRS and BENDEX matches, States are free to allow each State agency to request matching information or to designate a single coordinating agency to request all information. As explained in IRS Revenue Procedure 85-21, the IRS data must be requested only by a single State coordinating agency and each State agency designated to receive information from the coordinating agency must have a written agreement with the IRS concerning safeguarding and use of information. Similar instructions on access to BENDEX are contained in the POMS manual.

e. Reimbursement for Costs of Providing Data

The NPRM required that all agreements for the exchange of income and eligibility information must include a provision for determining appropriate reimbursement from the requesting agency for the reasonable cost incurred in providing the data.

Two commenters felt the proposal to charge for any mandated matching would impose a considerable burden on State resources. One State felt the reimbursement requirements should be deleted entirely and funds provided by the Federal agencies involved. Another commenter questioned the legality of regulations which require the use of Federal data and require States to pay for it.

Response: We do not believe the cost of obtaining information will present a major obstacle to the success of the matching program. States may enter into agreements to obtain and provide information free of charge or at nominal cost. Furthermore, we believe DEFRA entitles Federal agencies as well as State agencies to request appropriate reimbursement.

One commenter asked whether the reimbursement requirement includes data exchanges with other State agencies. The commenter notes the State already has a productive data exchange program in place and might be placed in the position of paying for information that is available presently at no cost.

Response: The law requires only that accounting systems must be utilized which assure that programs providing data receive appropriate reimbursement from programs utilizing the data. The regulations provide only that the agency must reimburse the provider of information, if requested, for the reasonable costs of matching and do not mandate that a State must begin charging for data that is previously provided without charge. We anticipate many States will want to continue satisfactory relationships and enter into new agreements with other States which will provide for an exchange of information without charge.

Even where the State must pay for such information, we expect that these charges will be modest. In addition, the Federal government will share in these administrative costs.

One commenter suggested to HCFA that if the regulations were implemented in such a way as to permit States to delegate their responsibility to Medicaid providers, the providers should be reimbursed for their added expenses.

Response: HCFA does not intend that State agencies would delegate IEVS responsibilities to Medicaid providers. We recognize many medical providers assist Medicaid applicants in completing applications and providing income and eligibility information. However, the providers are reimbursed for these administrative expenses through the Medicaid costs reimbursement programs.

7. Standardized Formats

The NPRM and the final rules require State agencies to use standardized formats and procedures for the exchange of data internally within States and for interstate exchanges with programs. These standardized formats will be established by the Secretary of the Department of Health and Human Services (HHS), in consultation with the Secretary of Agriculture, (based on the results of the HHS Inspector General study) for State wage, UC and public assistance data. State agencies must also use (a) the formats and procedures prescribed by the Internal Revenue Service (see Revenue Procedure 85-21) for obtaining unearned income information, and (b) the formats and procedures prescribed by the Social Security Administration in various published documents for obtaining benefit, pension and earnings data and for verifying SSNs.

Two commenters suggested there should be a single format for accessing all Federal sources of information at IRS and SSA.

Response: We recognize that multiple input and output record formats for the various Federal information sources represent a burden on States. Both IRS and SSA, however, are working with the HHS Inspector General task force on standardized formats to develop formats which are compatible with one another as well as with the standardized formats to be used for obtaining State data.

Two commenters expressed concern that the formats were not yet finalized. One commenter recommended that the matching requirements of these rules should be suspended until the formats are released, and another commenter maintained that State agencies should have an opportunity to comment on the formats before they are released.

Response: We expect the standardized formats to be issued by the Secretary of HHS soon after publication of these rules. If the issuance is delayed, we will provide further guidance to States on interim procedures to be used; we do not, however, anticipate any suspension of the matching requirements. The standardized formats have been developed with the

participation of 17 States in pilot testing. We believe there has been adequate opportunity for State comments to be made and addressed in this process.

Two commenters stressed that formats should be required for interstate exchanges. One of these commenters suggested the requirements should be limited to interstate exchanges.

Response: When the standardized formats are published, the Federal agencies will provide further instructions to State agencies regarding the formats. These comments will be considered in the development of these instructions.

One commenter wanted the definition of standardized formats clarified. The commenter believed it should be a minimum set of data requirements which would not entail a costly reformatting of case records.

Response: The intent of standardizing formats is to allow for the creation of files specifically for matching purposes. These formats require the minimum set of data elements necessary for a successful match and can be maintained independently from the case record.

8. Automation

In the common preamble to the NPRM we stated our view that the statutory requirement for IEVS mandated a logical process and not necessarily a physical or automated system to assure the timely and efficient exchange of information among the various programs. The needs-based programs currently have systems in place for exchanging and maintaining such data, but these systems vary in degree of automation. Although an increasing number of States are operating automated on-line systems to exchange, maintain and make data available to workers, we did not propose to require this level of automation. We also suggested that State agencies explore ways to integrate the IEVS processes into their current systems. The only specific proposal for automation was that non-UC SWICAS must have machine readable data bases.

We propose that costs for systems development and operations to support receiver agency requirements be allocated by programs under an approved cost allocation plan and be reimbursed at appropriate matching rates. We reminded State agencies to request prior approval according to existing regulations and guidelines.

FNS did not propose to require an overall, computerized system, but encouraged the use of automated technology in developing efficient methods of matching. FNS proposed that State agencies with automated data

bases would be required to enter all SSNs into the automated data base.

OFA did not propose new, separate systems to carry out the provisions of DEFRA but expected agencies to modify existing eligibility and information systems to accommodate the new requirements. The final rule has been modified at 45 CFR 205.51(d) to require the submittal of a request for prior approval, where appropriate, for any new developmental ADP costs associated with IEVS implementation. This is consistent with the language in the NPRM preamble, and is incorporated into regulatory text to emphasize the applicability of this requirement to these provisions. This requirement applies to costs incurred by another agency which will seek reimbursement from the State agency, e.g., for the development of a wage collection system, as well as costs incurred directly by the State agency.

HCFA did not propose new or separate systems but proposed to require the maintenance of the SSN, name and other data elements in a specified format in order to be able to conduct the required data exchanges. The State Medicaid agency was required to access SWICA, IRS and SSA data in an automated fashion, however.

a. General

Ten commenters stated automation would be required to meet IEVS requirements fully.

Response: We agree that automating the required IEVS functions would enhance a State agency's ability to respond timely to the substantial amount of information made available to the State agencies as a consequence of the data exchange requirements. We do not believe such automation should be required in these rules. In some States, compiling the requested records into the prescribed formats and printing the returned data for transmittal to the workers may be the only functions requiring automated processing, with all the other functions and processes performed manually. Each State agency must determine the relative costs and benefits of various levels of automation necessary to meet IEVS requirements.

Two commenters recommended that the Federal agencies authorize an increased percentage of Federal financial participation (FFP) to ensure that the States have the ability to implement the system, and also suggested the development of guidelines for requesting approval.

Response: Each Federal agency has the authority to respond to requests for enhanced matching rates contained in the State agency's Advance Planning

Document (APD) or APD amendments in accordance with existing agency policy and regulations. The decision to approve or disapprove such requests will be dependent upon whether the costs for the system are allocable or attributable to the automated system qualifying for the higher match. We believe that existing rules and procedures for requesting prior approval for enhanced funding for automating processes are sufficient for the purpose and must be followed by State agencies.

One commenter recommended a demonstration project for the development of system components.

Response: The systems requirements contained in the rules have been adequately demonstrated in current practice. Many States already have systems for handling wage and UC data for AFDC and FSP. The SSI Program has successfully matched with IRS data using the procedures that States will use. We also recommend that State agencies review the catalog of Automated Front-end Eligibility Techniques which may be obtained from the Department of Health and Human Services' Office of the Inspector General. We believe that this material and other material available from States with operating experience should provide a good base for other systems development.

One commenter stated that his State agency does not have an automated front-end eligibility system and the creation of one would cost a great deal and entail major modifications of the existing client information system.

Response: The agency is not required to create an automated front-end eligibility system. If the applicant and recipient population is so small that a front-end system has not been cost-effective so far, it is unlikely that the IEVS data received will make automation necessary.

One commenter believed that identical State systems would be necessary to implement the provisions.

Response: It is not administratively feasible nor desirable to require all State and Federal agencies to have identical systems. Each agency has its own systems requirements and each has developed systems that serve its own needs.

Each system has different degrees of automation and different processing techniques to carry out the agency's functions. The requirement for use of standardized formats will ensure that information can be exchanged between different systems. Our policy is to provide the States with maximum flexibility to develop systems to meet their specific needs.

A number of commenters did not agree that implementation of the IEVS can be done at a relatively low cost by making minor modifications to existing systems, partly because of staff costs involved in follow-up actions.

Response: We agree that the staff costs involved in follow-up actions could be greater than the systems development and maintenance costs and that these costs are difficult to estimate. However, studies conducted on wage matching and other computer matching for income and eligibility verification show that activities required by these rules can be carried out on a cost effective basis. These studies include:

- U.S. Department of Health and Human Services, Office of Inspector General, *Computer Matching in State Administered Benefit Programs*, Washington, D.C. Government Printing Office, June 1984.

- U.S. General Accounting Office, *Better Wage Matching Systems and Procedures Would Enhance Food Stamp Program Integrity*, GAO/RCED-84-112, September 11, 1984.

- U.S. General Accounting Office, *Legislative and Administrative Changes to Improve Verification of Welfare Recipients' Income and Assets Could Save Hundreds of Millions*, GAO/HRD-82-9, January 14, 1982.

- Greenberg, David H., and Pfeister, Jennifer, "Wage Matching Techniques Used in Administering the Food Stamp and AFDC programs: An Interim Analysis," Research report sponsored under grant number 59-3198-142 by the U.S. Department of Agriculture, Food and Nutrition Service, February, 1983.

- Greenberg, David, and Wolf, Douglas, "An Evaluation of Food Stamp and AFDC Wage Matching Techniques," Research report sponsored under grant number 59-3198-142 by the U.S. Department of Agriculture, Food and Nutrition Service, May 1984.

One commenter thought the regulations provided insufficient information for designing the system.

Response: We are publishing this information in manuals and other instructions. To this end, the following materials have been made available to the State agencies for designing the system.

- *Tax Information Security Guidelines* (for Federal, State and Local agencies), Department of the Treasury, Internal Revenue Service, Publication 1075 (Rev. 7/83)

- *Beneficiary and Earnings Data Exchange (BENDEX) Handbook*, U.S. Department of Health and Human Services, SSA Pub. No. 68-0810801.

- "Enumeration Verification System (EVS) User's Package for State Welfare Systems," SSA Office of Systems Requirements (301-594-3593)

- "Revenue Procedure 85-21: Return Information, Federal, State and Local agencies," *Internal Revenue Bulletin*, No. 1985-14, April 8, 1985.

- *State Data Exchange (SDX) Handbook*, U.S. Department of Health and Human Services, SSA Pub. No. 68-0502601.

b. IEVS Systems Support

A number of commenters expressed some concern regarding automated systems and their ability to support State agency information needs relating to the implementation of the IEVS requirements. A few commenters suggested possible revisions to Federal systems that could increase the efficiency and effectiveness of these systems.

Two commenters suggested information from the Veteran's Administration (VA) and the Railroad Retirement Board (RRB) would be useful to State agencies. One commenter added that the Bureau of Indian Affairs (BIA) has information that may be useful to certain States.

Response: In response to this and previous requests, we are exploring with the VA whether and how access to VA compensation and benefits information might be available. Access to VA and BIA information is not authorized by the statute. However, BENDEX currently reports RRB status (active or terminated). We have referred the suggestions on expanded access to the President's Council on Management Improvement, which is responsible for interagency coordination in this area.

One commenter asked about obtaining military pay data.

Response: Even though it is not required by current rules or by DEFRA, many agencies have agreements with military bases in their States to supply information on military personnel who apply for or receive benefits. The Department of Defense (DOD) has also established the Defense Enrollment/Eligibility Reporting System (DEERS), an automated file containing pay, health insurance and entitlement information on all active duty and retired military personnel and their dependents. A DOD/HCFA pilot project using this information to identify third party health insurance payors has recently been conducted with positive results. As soon as the report is available, it will be distributed to the States. We expect that DEERS will provide useful earnings information to public assistance agencies as well.

There were suggestions from States that SSA provide additional information on the SDX system; e.g., personal property information and direct deposit information.

Response: Codes which reflect the existence of various types of personal property and use of direct deposit are

available on SDX. The specific source, address, amount, or direct deposit bank are not available. This is explained in the SDX Handbook (SSA Pub. No. 68-0502601).

9. Monitoring

a. Quality Control

The three agencies proposed to require that IEVS information be used in QC reviews. OFA and HCFA specifically proposed to require that the IEVS information be made available to HHS to be used in the Federal QC review process. Rules for the FSP would have the same effect. The preamble to the NPRM stressed that each State agency would continue to be responsible for the accuracy of its eligibility and payment amount determinations as determined by the QC system, whether it complied with the requirements of these rules or not.

One commenter thought the QC review should be based on the State plan for reviewing and determining the priority of information and ordering of information for followup, because to use criteria to determine whether an agency is responsible for erroneous payments other than as described in the agency's State plan places the State agency in an unfair position. Another commenter thought that if State agencies are permitted to take action only on priority match information which would have an effect on the agency's error rate, the rule should specify that these errors would not be used to determine the error rate. One commenter recommended that State agencies be given a grace period for implementation of these rules during which QC errors resulting from IEVS matches would not be counted.

Response: We do not agree with these comments. The new State plan requirement that the State utilize additional sources of information for determining eligibility and the amount of assistance payments does not supersede the requirement to use other sources. Thus, the requirement to establish and use IEVS does not relieve State agencies of the responsibility to explore all areas of potential wage, income, resource, and income information in determining eligibility and payment amounts and use that information in the eligibility determination process. We do not believe QC programs should be revised because the State agencies have additional information available to determine eligibility. The QC process (Eligibility QC for Medicaid) will continue to focus on whether the eligibility status is correct for a case, and not on the process used to arrive at that decision. The final rules for all

programs have been amended to emphasize that the requirements for matching and followup do not relieve the State agency of its responsibility for the determination of erroneous payments and/or its liability for such payments. To fail to hold agencies responsible for erroneous payments would be inconsistent with other statutory requirements.

The final rules do not provide for a grace period for QC errors which might be discovered through IEVS matches. Based on State experience implementing new data exchanges, we do not believe that QC errors will increase due to this rule.

As discussed earlier in this preamble, the requirement that State agencies give priority action to IEVS data which is most likely to be useful in verifying eligibility and benefits has been deleted.

A commenter thought the Federal QC review should not cite a difference with State QC findings if the original State QC review correctly used the information sources specified and subsequently more recent information became available for Federal review.

Response: It has been a longstanding QC policy to conduct a Federal review based on case circumstances and any information available at the time of the rereview. During the rereview, if a case is found to be in error, errors will be cited regardless of whether or not there is a time lag in obtaining information. However, since the Federal review should occur shortly after the State reports its findings, this should rarely happen.

One commenter stated that State agencies should not be held accountable for incorrect information provided by the Federal government, such as the data on the BENDEX.

Response: The State agencies remain responsible for ensuring that any information they use in determining eligibility and payment amounts is correct. (See discussion on verifying information in section 4 of this preamble.)

b. Maintenance of Records and Reports

The NPRM for AFDC, Adult Assistance and Medicaid contained proposed information reporting requirements that required State agencies to maintain records for (a) tracking the status of match results sent to caseworkers for follow-up and (b) for reporting data on the actions taken and the savings realized based on the matches. FSP rules addressed only the latter reporting requirement.

Five commenters specifically objected to the requirement for tracking the status of match results sent to

caseworkers for follow-up, citing the difficulty of tracking each match (especially on applicants). One commenter believed the regulations should state that there is no follow-up or disposition required when there is no "hit"; one believed there should be no further tracking when the data does not affect a case.

Response: The FSP rule has been modified to be consistent with AFDC, Adult Assistance and Medicaid in requiring State agencies to use appropriate procedures to monitor the timeliness requirements. The Federal agencies believe a method to monitor the status of match results is necessary to assure that a State is in compliance with the requirement for acting on information within a specified timeframe. The requirement pertains only to information obtained through the IEVS; and if there is no match, then no follow-up is required. The system may be either automated or manual. The system must maintain the status of the match result until such time as case action is taken or the State agency has determined that the information does not affect the case. State agencies are expected to track these actions in the same way that they track such activities as the timeliness of application processing and the completion of fair hearings. It is only by means of such tracking that State agencies can comply with the requirements for monitoring program administration and operations.

Thirty letters responded to our request for comments on the requirement for a reporting system to capture data on actions taken and savings realized; more than fifteen commenters believed such a system would be too costly and burdensome to develop and maintain. Three commenters also indicated the reporting system would not produce reliable data on savings and cost avoidance. Some of the commenters suggested alternative ways to provide data on the outcome of matching, such as case sampling and targeted national studies. One commenter stated that current reporting was not specifically mandated by DEFRA and another commenter believed the QC review and reporting process should provide sufficient data to evaluate the agency's use of the data. Three commenters thought there should be a pilot test of the reporting requirements, and one commenter suggested the rules permit the State to submit for approval a plan for reporting. Several commenters recommended that any reporting requirements imposed by the Federal agencies should be uniform, and one

commenter believed reporting should be no more frequent than annually.

Response: While reporting was not mandated by DEFRA, we believe that it is necessary to help ensure the proper and efficient administration of the programs. In response to these comments, we are developing uniform, annual reporting requirements intended to minimize the record keeping and reporting costs and burden on States, while enabling the Federal government to monitor compliance with the requirements for accessing and using information. Specific instructions on reporting will be sent to each State agency. We intend to require State agencies to maintain and report annually on: (a) the number of agency records submitted to each IEVS source agency, (b) the number of positive match results received from each source agency, and possibly, additional minimal information, but only that which should be readily available to the State. We need consistent reporting of these elements and cannot permit States to develop individual reporting plans. A State agency may, of course, maintain whatever additional information is necessary for reporting of data on dollar savings and cost avoidance to State officials, for management information purposes. In addition, we intend to conduct targeted program reviews in selected states after these matching requirements are fully implemented. We will review case files and related documentation on cases where action has been taken as a result of IEVS data. States are expected to maintain records of case action based on IEVS-obtained information as they do for other case actions. The Federal agencies have made final rule changes which require State agencies to maintain necessary records on the use of IEVS information.

10. Implementation

The final rules require State agencies to implement the requirements within 90 days of publication of these rules. We are providing 90 days to help ensure that State agencies can implement the requirements of the rule, including approval of plan submissions. Costs incurred in implementing this rule are eligible for Federal financial participation. Exceptions to the 90 day implementation period are:

(a) Medicaid agencies were required to obtain the SSNs of Medicaid applicants and recipients effective April 1, 1985 (pursuant to Medicaid Program Memorandum 85-3-State Plan Preprint);

(b) Food Stamp and AFDC agencies must maintain during the implementation period the level of effort

required under prior regulations regarding wage matching;

(c) all State agencies must comply with the requirement regarding independent verification of IRS unearned income information effective upon receipt of the IRS information;

(d) all State agencies must have a source of employment-related data through the State Wage Information Collection Agency (SWICA) by September 30, 1986, in accordance with the requirements of Section 1137(a)(3) of DEFRA; and,

(e) a State agency may request and may receive a waiver through September 30, 1986 in order to delay implementation of any other provision of the regulations other than c. above (i.e., independent verification of IRS unearned income information).

Except where permitted by waiver as described in paragraph (e) above, State agencies must also as of the effective date of these rules:

(a) request IRS unearned income information on all current recipients; and,

(b) accrete to the BENDEX system all current recipients not previously accreted. Where the State has accreted individuals but not established earnings exchange, the State also reaccrete these individuals for this purpose.

Several State commenters believed implementation would take longer than permitted by statute and the waiver provision should permit longer delays. Several commenters were concerned about implementing the new system because of State budget considerations. Some of these States legislatures will not meet soon enough to appropriate the funds necessary for implementation.

Response: We have no authority to permit delays beyond September 30, 1986. Furthermore, we believe that the matching requirements were sufficiently specific in the statute for States to have taken whatever legislative action as may have been necessary to ensure full implementation before September 30, 1986. All State agencies have income and eligibility verification processes in place and most are currently using some of the sources required by these rules.

Several comments were received regarding increased costs of implementing and operating the verification system. One commenter stated that personnel and computer time must be redirected to implement the new rules while more effective error-rate reduction efforts must be delayed; the commenter further stated the rule would result in an agency's receiving information that would be useful for

error reduction, but would result in a short-term increase in current errors.

Response: Although initial implementation of the system may affect workload management, this should be temporary and minimal. Additionally, if severe problems are anticipated, a delay in implementation of specific provisions may be granted until September 30, 1986. This should be enough time to implement the system and avoid major workload disruptions or increases in current error rates.

One commenter suggested the regulations should require that each State, rather than each agency, submit a request for a delay in implementation.

Response: We do not permit a State to submit one request for the whole State for a delay in implementation because the delay may effect only one program. The State may, however, submit the same request to both Secretaries. The three agencies will consult with each other before approving or disapproving a delay in implementation.

One commenter stated waiver requirements must be specific and must allow State agencies sufficient time to respond.

Response: A State agency must include in its request for delay in implementation at a minimum the following:

- (1) The provision;
- (2) The date the State agency will implement the provision;
- (3) Justification for not being able to implement within 90 days of publication of the final rule; and
- (4) Implementation plan (what steps the State agency plans to take to implement the provision by the date given in item 2 above). The implementation plan should describe any system or program improvements necessary to comply with the rules and the steps to be taken to make these improvements (such as the submission of an advance planning document (APD) or legislative action).

Executive Order 12291

Executive Order 12291 requires a regulatory impact analysis be performed for any rule that is a major rule. A major rule is one which has an annual impact on the economy of \$100 million or more; results in a major increase in costs or prices; or has significant adverse effects on competition, employment investment, productivity or innovation.

This rule has been reviewed under Executive Order 12291 and has been classified "not major". The FNS portion of this rule will not have an annual effect on the economy of \$100 million or more, nor are the rules likely to result in

a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The SSA portion of this rule will have an annual effect of more than \$100 million and therefore does constitute a major rule. However, these program costs and savings are a direct result of DEFRA. Since the Secretary of HHS has no discretion in implementing the statutory requirements, the Office of Management and Budget (OMB) has granted a waiver from the requirement to conduct a regulatory impact analysis.

HCFA Voluntary Regulatory Impact Analysis

HCFA has determined that a regulatory impact analysis is not required for this final rule. Nevertheless, HCFA recognizes concerns with potential impacts, and that annual savings in the Medicaid program may eventually exceed \$100 million. Therefore, HCFA has provided a voluntary impact analysis. Comments relating to this analysis are discussed above in the specific topical areas.

Implementation of this rule will result in Federal savings in the Medicaid program to the extent additional applicants and recipients are discovered to be ineligible for Medicaid benefits as compared to those found eligible under existing income and eligibility verification systems. HCFA actuaries estimate that implementation eventually could save as much as \$100 million per year in Federal Medicaid program expenditures once the system is fully operational.

The Federal Medicaid program savings are likely to result from the following:

- \$50 million would occur without action by HCFA or State Medicaid agencies as a direct result of termination of ineligible individuals from the SSI and AFDC programs as a result of new or expanded data matches on unearned income.
- \$20 million in Federal savings would result from matching by States of Medicaid program eligibility and income data against other data on unearned income and taking action to terminate ineligible individuals from medical assistance-only programs.

- An additional \$30 million in Federal Medicaid program savings might result from implementation of a data system for wages; i.e., the potential availability of health insurance through employment, or the potential to purchase insurance through employment-related programs.

- We expect it would take three years to achieve the \$70 million of annual Federal savings related to matching on unearned income. However, the quarterly reporting data match system for wages for wages is not required to be in place until September 1, 1988. Consequently, the full savings would probably not be achieved until FY 1989 or FY 1990.

As the range of comments received demonstrates, the costs of implementation and operation of the revised system will vary from State to State. We recognize in some States the costs may be high. However, it is these States which we believe will benefit the most from the system. The States that already have operational income and eligibility verification systems will not benefit as much. But, on the other hand, implementation costs for them will be relatively small. The following includes a discussion of a number of factors that will affect the magnitude of the ultimate costs.

First, we expect States will modify existing State eligibility and information systems, rather than develop new systems. However Wyoming and Puerto Rico now have no automated Medicaid data processing at all, and may have to develop new systems to access information in an automated fashion.

Where there are existing systems, those systems will have to be modified to use SSNs as required by these rules, and will have to be modified to use the standardized formats developed. This will result in implementation costs and increased operating costs beyond what States currently expend. For each State, the actual increase in administrative costs will be dependent on the current level of automated systems and wage and income matching in the State. Currently, 17 States have integrated their Medicaid eligibility determination systems with eligibility determinations for other means-based programs that would be covered under these IEVS requirements.

Further, each of the following activities and procedures will require design, developmental, and implementation costs:

- Data matching;
- Data management;
- Data security;

- Investigation and independent verification of meaningful matches; and
- Applicant and recipient notification and follow-up.

Once implemented, each of these activities and procedures will require ongoing operating costs, which will also be incurred for tape exchanges and legal services.

Depending on how States implement these regulations operationally, the resulting costs could be large or relatively small. We believe the necessary changes can be made at relatively low costs, primarily by making minor modifications to existing systems. Nonetheless, the costs of such systems raise the possibility that the savings resulting from implementation of these proposals could be exceeded in some States by the costs for at least the first years, during which implementation costs will be at their highest, while savings will occur later. Because of the possible risk of adverse outcomes in some States, we expect that the costs and benefits of this program will be closely monitored by the State agencies, and we will be reviewing the degree of success of the program on an ongoing basis.

Many recipients participate in more than one program, and eligibility for one program is often related to eligibility for other programs. For example, AFDC and most SSI recipients are usually eligible for Medicaid. However, eligibility requirements are not identical between any two programs. Therefore, even if an individual or family loses eligibility under one program, they may retain eligibility or be eligible on another basis for other programs.

It is estimated that the matching of unearned income would eliminate about 30,000 individuals from the SSI rolls. Many of these individuals would also lose their categorically-needy Medicaid eligibility, but some could be expected to be eligible for Medicaid under the medically-needy option that 32 States currently follow. Similarly, some of the individuals eliminated from the AFDC rolls would come back onto the Medicaid rolls under the medically-needy option.

This regulation is likely to result in a significant reduction of Federal Medicaid program expenditures and an increase in administrative costs. The savings potentially may exceed \$100 million annually. However, these savings would be primarily a result of the statutory requirements of section 2651 of Pub. L. 98-369, not this rule. The amount of increase in costs will depend largely on the systems currently in place for income and eligibility verification

and on decisions made by the State agencies regarding how the new requirements will be implemented. However, we do not expect these costs to exceed \$100 million annually or to exceed any other threshold criteria for major rules. Therefore, we have determined that a regulatory impact analysis is not required.

Executive Order 12372 (Applicable only to the Food Stamp Program)

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notices to 7 CFR 3015 Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) and the Secretaries of DHHS and USDA have certified that it will not have a significant economic impact on a substantial number of small entities. Under the RFA, small entities include small businesses, nonprofit organizations that are not dominant in their field, and governmental jurisdictions of less than 50,000 population. States and individuals are not treated as small entities under the RFA. This rule would change Federal regulations to comply with Pub. L. 98-369 by requiring State agencies to implement a system for verifying income and eligibility and would set standards for certain State agency actions. State agencies would be affected in varying degrees by the need to develop new administrative procedures. Applicants and recipients would be affected to the extent information obtained from the verification system and from follow-up action would increase State agency effectiveness in identifying and taking appropriate action on applicants and recipients with respect to eligibility status and level of benefits.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (PL 96-511), the collection of information requirements that are included in these final rules have been submitted to the Office of Management and Budget (OMB) for review and approval. A notice will be published in the Federal Register when approval is obtained.

Organizations and individuals desiring to submit comments on these collection of information requirements

should direct them to the agency officials designated as information contacts earlier in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, (Room 3208), Washington, D.C. 20503, Attn: Fay Iudicello (for the AFDC and Medicaid programs) or Marina Gatti (for the Food Stamp Program).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

ADDITIONAL SUPPLEMENTARY INFORMATION:

Federal-State Unemployment Compensation Program

The Employment and Training Administration (ETA) is issuing final regulations to provide for the participation of the State employment security agencies (SESA) in an income and eligibility verification system. DEFRA amended the Social Security Act to require income and eligibility verification exchange among State and local agencies administering various federally-assisted programs including the Federal-State unemployment compensation program. Under prescribed conditions, wage, income and benefit information on individuals will be exchanged among the agencies administering the identified programs. The disclosure and exchange of information is limited to program purposes and must be safeguarded against unauthorized disclosure. Section 2651 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amended title XI of the Social Security Act by adding section 1137 which established an income and eligibility verification system for the exchange of information among State agencies administering specified programs. The programs are: Aid to Families with Dependent Children (AFDC), Medicaid, Food Stamps, Unemployment Compensation (UC), and any State program under a plan approved under Title I, X, XIV of XVI or the Social Security Act. Programs participating in the income and eligibility verification system are required to share information to assist in the child enforcement support program and to assist the Secretary of Health and Human Services in verifying eligibility amounts under titles II and XVI of the Social Security Act.

Section 2651 of the DEFRA also amended section 303 of Title III of the Social Security Act to require the State agency charged with administering the UC law to participate in the income and eligibility verification system. Section

303 has previously required only that State UC agencies disclose certain specified information to Federal and State Food Stamp agencies, and State and local child support agencies. Section 3304(a)(16) of the Internal Revenue Code of 1954 has required that State UC agencies disclose wage information to AFDC agencies.

Under the new verification system, employers will be required to make quarterly wage reports to a State agency (which may be the State UC agency) except that the requirement may be waived if an alternate system for providing employment-related income and eligibility data is approved by the Secretary of Labor (in consultation with the Secretaries of Health and Human Services and Agriculture).

The wage data will be available for all of the participating programs under the income and eligibility verification system. All agencies will also have access to information on income and earnings of individuals from the Social Security Administration and unearned income from the Internal Revenue Service.

ETA's regulations do not contain specific requirements as to the extent to which information must be utilized in verifying eligibility and benefit amounts. Eligibility and benefit amounts are determined under State rather than Federal, UC laws. The State UC laws have considerable latitude under Federal law in determining the usefulness and effectiveness of various sources of information. In addition, ETA continues to work with State UC agencies on improved methods for ensuring correct and timely payments of benefits.

The Supplementary Information section of the published proposal (50 FR 10450-10455) is hereby incorporated in this preamble by reference.

The final regulations incorporate the substantive changes and improvements to the published proposal. The proposal was published in the Federal Register on March 14, 1985. Comments on the proposal published on March 14, 1985, were solicited through April 29, 1985.

The Department received timely written responses to the proposal from 11 State employment security agencies, 11 State Health and Human Resources agencies, 1 County Social Service agency and 1 association for housing authorities. Comments were received from Alaska Department of Health and Social Services (AL-DHSS), Alaska Department of Labor (AL-DOL), Arizona Department of Economic Security (AZ-DES), California Employment Development Department

(CA-EDD), Florida Department of Health and Rehabilitative Services (FL-DHRS), Kentucky Cabinet for Human Resources (KY-CHR), Maine Department of Human Services (ME-DHS), Maryland Department of Human Resources (MD-DHR), Massachusetts Department of Public Welfare (MA-DPW), Minnesota Department of Human Services (MN-DHS), Minnesota Department of Economic Security (MN-DES), Nebraska Department of Social Services (NE-DSS), Nevada Employment Security Department (NV-ESD), Ohio Bureau of Employment Services (OH-BES), County of Lucas, Ohio Department of Human Services (Col-DHS), Association of Oregon Housing Authorities (AOHA), Oregon Employment Division (OR-ED), Pennsylvania Office of Employment Security (PA-OES), Texas Department of Human Resources (TX-DHR), Vermont Department of Social Welfare (VT-DSW), Washington Employment Security Department (WA-ESD), Wisconsin Department of Health and Social Services and Department of Industry, Labor and Human Relations (WI-HHS&DOL) and Wyoming Employment Security Commission (WY-ESC). Many of the comments received addressed the regulations proposed by the Department of Agriculture and Health and Human Services to which the Department of Labor cannot respond. The Department gave careful consideration to all comments and suggested changes received before drafting the final regulations.

Following is a summary of the comments directed specifically to the rules proposed by the Department of Labor and the Department's response in order of Section.

Section 603.2 Definitions

Comments on this section dealt mainly with the meaning of "wage information" and "claim information". Oregon (OR-ED) is concerned that a literal interpretation of the term "employer address", included in "wage information", would preclude the current State practice of using the "address of record" which could be an employer's representative or post office box. This interpretation would require considerable procedural change and expense. The Department did not intend in the proposed rules to require SESAs to change any existing data elements maintained on automated files. However, any changes to data elements and systems required by a requesting agency fall under the requirements in Section 603.6(b)(5) covering reimbursement for costs incurred in providing data.

Ohio (OH-BES) questions the statutory authority for using such a broad definition of "wage information." It questions the need to include the employer's name and address in the definition when the purpose of collecting wage information is to verify eligibility and compute benefits. It is also concerned that if a State changed from a wage request system to a wage record system before September 30, 1988, that the definition of "wage information" would be imposed before the change.

The Department believes that the statutory language requires disclosure of any information maintained by SESAs that is needed by requesting agencies for verifying eligibility and benefit amounts. Therefore, if wage information is available prior to the September 30, 1988 effective date, we believe DEFRA requires it be provided to requesting agencies. Additionally, we believe the collection of information regarding the name and address of the individual's employer is reasonably related to ensuring eligibility and the accuracy of wage information.

Comments were received from California (CA-EDD), Minnesota (MN-DHS), Oregon (OR-ED), Ohio (OH-BES) and Washington (WA-ESD) on subsection (5) of "Claim Information." California, Minnesota and Ohio object to disclosable claim information being defined in terms of what requesting agency needs rather than what is available on an existing data base. These SESAs are concerned that implementation of subsection (5) could lead to disclosing information contrary to existing State laws and agreements and the intended purpose of Pub. L. 98-369 itself. They also point out that most of the substance under the "wage information" and the "claim information" definitions is identical. Ohio also feels that this section is completely without statutory foundation. California feels this provision needs more specificity as to what information can be released. Minnesota feels that the information to be released should be limited. Washington (WA-ESD) indicates that data relating to job refusal is maintained on their system only if the refusal results in a disqualification. This State maintains it is not practical to have the level of detail specified in Section 603.2(c)(4) on their system. We believe that the definitions of wage and claim information are reasonably related to the statutory language which requires agencies to disclose any information that is needed to verify eligibility and benefit amounts. To the extent such disclosures are required for compliance

with DEFRA, modification to State law may be necessary.

The Department feels that the word "useful" may be too broad. The language of subsection (c)(5) has been changed from "which the requesting agency determines is useful" to "which is needed by the requesting agency to verify eligibility and benefit amounts." We expect the agreements will detail specific information to be disclosed and that the requesting agency must demonstrate why information is needed as a condition for disclosure. No other changes have been made to this section of the proposed rules.

Section 603.3 Eligibility Conditions for Claimants

Section 603.3 requires claimants to furnish their Social Security Numbers (SSN) as a condition of eligibility for UC. Wisconsin was concerned about the inconsistent use of the term SSN and Social Security Account Number (SSAN) among the various Federal agencies. Most of the Wisconsin agencies use SSAN only where benefits are being paid on a social security claim. Although the two terms are synonymous in Federal usage, in order to avoid confusion the Department has used only the term SSN throughout the rules.

If a claimant fails to provide a SSN the claimant will be ineligible for UC. Subsection (c) provides that an ineligible claimant may become eligible if a SSN is provided and the claim may be backdated to the initial filing date. Two comments dealt with this subsection.

Arizona (AZ-DES) indicates that no backdating of claims is allowed under State regulations and sees no reason to "reward" a claimant who refuses to provide required information. Oregon (OR-ED) does not oppose backdating, but suggests that a time limit be imposed. DEFRA contains no specific requirements regarding backdating. Backdating of claims is an issue now decided under State law. The Department of Labor feels, therefore, that the regulation should permit backdating only to the extent permitted under State law. The language of subsection (c) has been changed from "retroactive to the date of filing an initial claim" to "retroactive to the extent permitted under State law."

Section 603.4 Notification to Claimants

Two comments addressed the DEFRA requirement that the agencies notify applicants, at the time of application and periodically thereafter, that information about them will be exchanged and used to verify income

and eligibility. Wisconsin (WI-HHS&DOL) notes that the term "periodically" will be defined by individual programs and suggested that the Federal Government issue a single statement on the minimum frequency of required notices. It prefers that all of the rules use the food stamp notification in 7 CFR 273.2(b). Oregon (OR-ED) feels it is an undue burden to require notification at the initial claim stage as well as periodically and suggests only one notification.

The language of DEFRA under section 1137(a)(6) requires that applicants be notified "at the time of application, and periodically thereafter, that information available through the system will be requested and utilized." Periodically was defined in a proposed Unemployment Insurance Program Letter (UIPL) published in the *Federal Register* on June 14, 1985. Since no comments were received on this definition, it is being incorporated into these final rules in response to the comments on the proposed rules. The periodic notice requirement will be satisfied with provision of a printed notice on or attached to any subsequent additional claims.

Section 603.5 Disclosure of Information

This rule requires State UC agencies to disclose information to authorized requesting agencies and requires adherence to standardized formats. Oregon (OR-ED) and California (CA-EDD) feel it is unreasonable to require "standardized formats" which had not yet been established, reviewed or commented on. Under section 1137(a)(4) the State agencies must "adhere to standardized formats and procedure established by the Secretary of Health and Human Services (HHS) (in consultation with the Secretary of Agriculture)." HHS has sponsored pilot tests of standardized formats. These formats will be issued initially as guidelines in order to provide the flexibility to make any needed changes.

Ohio (OH-BES) is concerned that the proposed rules permit disclosure of information beyond the authority granted by Federal and State law. It is particularly concerned about the disclosure of "claim information" as defined in Section 603.2(c)(5). This comment has been addressed in Section 603.2.

California (CA-EDD) is also concerned about having to disclose information simply "deemed by the requesting agency to be useful" and suggests that the rules ensure that no rearrangement of priorities detrimental to the programs providing the data be

required. The establishment of priorities is an issue of operation not regulations. This issue has been addressed in section 603.2 and should be worked out as part of the agreements.

Section 603.6 Agreement Between State Unemployment Compensation Agency and Requesting Agency

Maine (ME-DHS) commented that agreements are unnecessary since the statute requires State agencies to exchange information. As indicated in the summary to the general preamble, we disagree. Agreements are needed to protect data and establish appropriate reimbursement and procedures for access and use.

Minnesota (MN-DES) commented that the rule is vague regarding the procedures to follow if the requesting agency is a UI agency or a SWICA. California (CA-EDD) is concerned about the lack of a procedure for resolving disputes arising out of the agreements. It indicates that constant telephone requests for immediate information could not be accommodated. Pennsylvania (PA-DOL) feels that a model agreement would be helpful. These comments are concerned with operational issues and can be addressed in the agreements and with UIPLs. Model agreements are being developed and use of them should help State agencies expedite arrangements for the exchange of data.

Section 603.7 Protection of Confidentiality

This section lists the measures required by the requesting agencies to protect the confidentiality of information received from the State UC agencies against unauthorized disclosure. California (CA-EDD) is concerned about subsection (a). This subsection states that the UC agency shall require the requesting agency to comply with UC's provisions against disclosure. California feels that confidentiality should be the responsibility of the receiving agency, and that the furnishing agency's responsibility should terminate upon verification that the requestor is properly authorized to receive the information. The Department disagrees with this suggestion. The information disclosed by the furnishing agency is UC information. Since any violations of disclosure are covered under the State UC law, the ultimate responsibility must lie with the UC agency to protect its own information. One method of protecting this information will be the onsite inspections by the State agency.

Comments by Wisconsin and Oregon are on subsection (a)(6)(ii). Wisconsin feels it unnecessary to have each

employee sign a written acknowledgment in light of existing Federal and State penalties for disclosure of UI information. Each State should devise its own methods. Oregon suggests this provision be struck as it is "massive overkill" to require all employees who might access information to sign a written acknowledgment. This State recommends that the agency Administrator be required to sign an acknowledgment on behalf of the entire agency attesting to agency's policies and procedures regarding confidentiality. The Department agrees with these suggestions. The final regulations are modified to incorporate Oregon's suggestions that the Administrator be required to sign an acknowledgment on behalf of the entire agency.

Ohio feels that subsection (b) is contrary to its State law and oversteps the rulemaking authority allowed by the Federal statute. It also points out that no disclosure restrictions are placed upon individuals, requesting agencies, attorneys, prosecuting authorities or authorized agents who receive information from a requesting agency. Under section 603.7(b)(5) redisclosures by a requesting agency are permitted only if "provision for such redisclosure is contained in the agreement between the requesting agency and the State UC agency." Restrictions on redisclosure by third parties can and should be incorporated into these agreements. Therefore, no changes are made in the final regulations.

Texas (TX-DHS) feels that additional language should be added to subsection(c) specifying that "onsite inspections should be required and approved in advance." In regard to Federal inspection, since this is State data, it is most appropriate for State officials to be responsible for any inspections. Accordingly, the final rule has been revised to provide for onsite inspection by State officials only.

Section 603.8 Obtaining Information from Other Agencies and Crossmatching with Wage Information

Three States commented on this section. California is concerned that the language in subsection (a) conflicts with the exemption language in the preamble. This subsection could be interpreted as requiring verification of SSN status of all UI claimants through the Social Security Administration, which would be unnecessarily costly and burdensome. It is recommended that the language reflect that of the preamble or at the least that the term "shall" be changed to "may". Massachusetts feels

that an additional match with the Social Security Administration for wage information is redundant.

Oregon addressed subsections (b) and (c). It urges that subsection (b) be clarified to indicate that States, and not the DOL, determine what information is likely to be productive in identifying ineligibility for benefits and preventing incorrect payments. Oregon interprets the rule this way, but feels it should be clarified. Although it agrees with subsection (c) that any amplifications must be published in the *Federal Register*, it feels the language was too broad and vague.

The Department feels this section follows the statutory language and does not go beyond it. Therefore, no change is proposed in the final regulations.

Section 603.9 Effective Date

Six States commented on the effective date. Oregon and Florida indicated that the April 1, 1985 effective date is unrealistic in view of each State's need to develop automated systems. Arizona suggests that waiver requests should be considered on an individual basis and extended beyond the September 30, 1986 deadline. This extension should be without sanction and under a mutually agreed upon plan of action. Texas points out that at least five publications relating to the operations of SIEVS are currently unavailable to State agencies. Oregon points out that since the rules were published in the *Federal Register* on March 14, 1985, there is inadequate time to respond, let alone implement the program. Florida suggests that the September 30, 1986 implementation date is overly optimistic since some agencies, particularly the IRS, have not yet developed the technical requirements for obtaining information from their files.

Comments concerning the short time frame for implementation and the delay in issuing proposed rules are valid. The effective date for implementation, however, is statutory and out of the control of the various Departments involved. The Department recognizes that States may not be able to fully implement the requirements within the 90-day period following publication of these final rules. The Department expects the State UC agencies to request a waiver of those requirements which cannot be met by submitting a plan describing their effort to comply with the requirements of Section 1137 (a) and (b) which includes a time table and appropriate supporting justification.

Section 603.21 Alternative System

This section allows the Secretary of Labor to waive the requirement of

quarterly wage reporting by employers if a State has in effect an alternative system which is as effective and timely for providing income and eligibility data. Wisconsin has requested the criteria that will be used by the Secretary of Labor to judge the effectiveness and timeliness of an alternative system as a guide for the states in developing alternative systems. The Department needs to consult with the other federal agencies as to what types of alternative systems are viable. If any alternative system is considered viable, the criteria for it will be published in the *Federal Register* within 90 days of the date of these final regulations.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, NW., Washington, DC 20213; telephone (202) 376-6636 (this is not a toll free number).

Classification—Executive Order 12291

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the paperwork requirements that are included in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 1205-0238.

Trade Sensitive Activity

The Department believes that the final rule in this document does not involve trade sensitive activities. This determination is predicated upon the fact that this rule only implements amendments to an individual entitlement program and will only affect individuals applying for benefits under unemployment compensation programs. Consequently, this proposed rule does

not fall within the scope of the Office of Management and Budget's definition of a trade sensitive activity.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an income and eligibility verification system and has no economic impact on any small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Regulatory Flexibility Act Certification

I, William E. Brock, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b) that the final regulations published hereinafter (20 CFR Part 603, Income and Eligibility Verification System Final Rule) will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Dated: February 18, 1986.

William E. Brock.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 275

[Amdt. No. 264]

Food Stamp Program; Deficit Reduction Act

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Therefore, 7 CFR Parts 271, 272, 273, and 275 are amended as follows:

1. a. The authority citation for Parts 271, 273 and 275 continues to read as follows:

Authority: 91 Stat. 958 (U.S.C. 2011-2027).

b. The authority citation for Part 272 continues to read as follows:

Authority: 91 Stat. 958 (U.S.C. 2011-2029).

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definitions of "State Income and Eligibility Verification System" (IEVS) and "State Wage Information Collection Agency" (SWICA) are added in alphabetical order to read as follows:

§ 271.2 Definitions.

State Income and Eligibility Verification System (IEVS)—means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of Section 1137 of the Social Security Act, generally referred to as the IEVS.

State Wage Information Collection Agency (SWICA)—means the State agency administering the State unemployment compensation law, another agency administering a quarterly wage reporting system, or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data as the two just mentioned agencies.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, paragraph (c)(1) is revised, paragraph (c)(2) is redesignated as paragraph (c)(3), a new paragraph (c)(2) is added, and paragraph (g) is amended to add a new paragraph (70) in numerical order. The revision and additions read as follows:

§ 272.1 General terms and conditions.

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant or recipient households shall be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally-assisted State

programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in § 273.2(j)(2).

(ii) Persons directly connected with the administration or enforcement of the programs which are required to participate in the State income and eligibility verification system (IEVS) as specified in § 272.8(a)(2), to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amounts under those programs;

(iii) Persons directly connected with the administration of the Child Support Program under Part D, Title IV of the Social Security Act in order to assist in the administration of that program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under Titles II and XVI of the Social Security Act;

(iv) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(v) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulation. The written request shall include the identity of the individual requesting the information and his authority to do so, violation being investigated, and the identity of the person on whom the information is requested.

(2) Recipients of information released under paragraph (c)(1) of this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section. In addition, information received through the IEVS must be protected from unauthorized disclosure as required by regulations established by the information provider. Information released to the State agency pursuant to section 6103(l) of the Internal Revenue Code of 1954 shall be subject to the safeguards established by the Secretary of the Treasury in section 6103(l) of the Internal Revenue Code and implemented by the Internal Revenue Service in its publication, *Tax Information and Security Guidelines*.

(g) Implementation. * * *

(70) *Amendment 264.* These rules are effective on May 29, 1986. No later than that date State agencies are required to submit the attachment to their State Plan of Operation specified in § 272.2 and in § 272.8(i), documenting either full implementation of these rules or good faith efforts to implement them. The

documentation of full implementation or of good faith efforts shall show either that the State agency is routinely requesting and using, or shall show the dates when it will begin routinely to request the use, information from the various data sources specified in § 272.8(a) according to the frequencies for requests, timeframes and other requirements of § 272.8(e), (f) and (g). Full implementation shall include requests for available information from the Social Security Administration for all recipients for which such information has not been previously requested. The 30-day timeframe specified in § 272.8(g) is effective for applicant households which become recipients as discussed in § 272.8(e)(1) as soon as a State agency begin receiving information from particular data sources.

(i) A Plan describing good faith efforts shall at a minimum document that the State agency is currently in compliance with wage match criteria as specified in the final rulemaking of November 5, 1982 (47 FR 50180), assure that such compliance will continue at current levels until such time as these provisions are implemented, and provide an implementation schedule that reflects full compliance in the minimum amount of additional time. Requests for delays of implementation beyond (insert date 90 days after publication) shall identify the applicable regulation part, the date for implementation, justification for the delay, and the implementation plan.

(ii) The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the Secretary of the Department of Labor prior to the approval of Plans of Operation documenting good faith efforts. In no event shall the Secretary approve a delay of the provisions of individual notification in § 273.2(f)(9) beyond the initial implementation date of any of these new provisions.

(iii) Implementation schedules beyond September 30, 1986 are not approvable, with the following exception: If on April 1, 1985 no SWICA exists in a particular State, the provisions of the rule as they relate to SWICAs shall be effective upon the designation of a SWICA. Implementation of a SWICA after April 1, 1985 shall take place as soon thereafter as possible but in no event later than September 30, 1988. All SWICAs with delayed implementation shall be in operation so that wage information is reported to them starting with the month of October 1988.

4. In § 272.2, the seventh sentence of paragraph (a)(2) is revised, and a new

paragraph (d)(1)(iv) is added. The revision and addition read as follows:

§ 272.2 Plan of operation.

(a) *General purpose and content.* * * *

(2) * * * The Plan's attachments include the Quality Control Sample Plan, the Disaster Plan (currently reserved), the optional Nutrition Education Plan, and the plan for the State Income and Eligibility Verification System. * * *

(d) *Planning documents.*

(1) * * *

(iv) A plan for the State Income and Eligibility Verification System required by § 272.8.

5. A new section, § 272.8, is added to read as follows:

§ 272.8 State Income and Eligibility Verification System.

(a) *General.* (1) State agencies shall maintain and use an income and eligibility verification system (IEVS), as specified in this section. By means of the IEVS, State agencies shall request wage and benefit information from the agencies identified in this paragraph and use that information in verifying eligibility for and the amount of food stamp benefits due to eligible households. Such information shall be requested and used with respect to all household members, including any considered excluded household members as specified in § 273.11(c) whenever the SSNs of such excluded household members are available to the State agency. If not otherwise documented, State agencies shall obtain written agreements from these information provider agencies that they shall not record any information about individual food stamp households and that staff in those agencies are subject to the disclosure restrictions of § 272.1(c). The wage and benefit information and agencies are:

(i) Wage information maintained by the State Wage Information Collection Agency (SWICA);

(ii) Information about net earnings from self-employment, wages, and payments of retirement income maintained by the Social Security Administration (SSA) and available pursuant to section 6103(1)(7)(A) of the Internal Revenue Service (IRS) Code; and Federal retirement, and survivors, disability, SSI and related benefit information available from SSA;

(iii) Unearned income information from the IRS available pursuant to Section 6103(1)(7)(B) of the IRS Code; and

(iv) Claim information from the agency administering Unemployment Insurance Benefits (UIB) and any information in addition to information about wages and UIB available from the agency which is useful for verifying eligibility and benefits, subject to the provisions and limitations of section 303(d) of the Social Security Act.

(2) State agencies shall exchange with State agencies administering certain other programs in the IEVS information about stamp households' circumstances which may be of use in establishing or verifying eligibility or benefit amounts under the Food Stamp Program and those programs. State agencies may exchange such information with these agencies in other States when they determine that the same objectives are likely to be met. These programs are:

(i) The Aid to Families with Dependent Children (AFDC);
(ii) Medicaid;
(iii) Unemployment Compensation (UC);

(iv) Food Stamps; and
(v) Any State program administered under a plan approved under Title I, X, or XIV (the adult categories), or Title XVI of the Social Security Act.

(3) State agencies shall provide information to people administering the Child Support Program (Title IV-D of the Social Security Act) and Titles II (Federal Old Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(4) *Agreements.* (i) Prior to requesting or exchanging information with other agencies, State agencies shall execute data exchange agreements with those agencies. The agreements shall specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements shall be part of the State agency's Plan of Operation, as required by paragraph (i) of this section. These agreements shall cover at least the following areas:

(A) Identification of positions of all agency officials with authority to request wage information;

(B) Methods and timing of the requests for any types of information, including the formats to be used;

(C) The safeguards limiting release or redisclosure as required by Federal or State law or regulation as discussed in § 272.1(c) and as may be required by other guidelines published by the Secretary; and

(D) Reimbursement agreements, as appropriate, including new developmental costs associated with the furnishing of data.

(ii) Agreements with SWICA's and agencies providing UIB data shall specify State agency access no less frequently than twice a month for applicants.

(5) *Uses of data.* The State agency shall use information obtained by means of the IEVS for the purposes of:

(i) Verifying a household's eligibility;

(ii) Verifying the proper amount of benefits;

(iii) Investigating to determine whether participating households received benefits to which they were not entitled; and

(iv) Obtaining information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(b) *State Wage Information.* The wage information maintained by a SWICA which is not a UC agency or which is a UC agency but does not use wage data for determining UIB shall:

(1) Contain the Social Security Number (SSN), the last name, wages earned for the period of the report for each employee, and an identifier of the employer such as name and address;

(2) Include all employers covered by the State's UC law;

(3) Be accumulated by employers for no longer periods than calendar quarters and be reported by employers to the SWICA within 30 days of the end of each quarter;

(4) Be machine readable; and

(5) Be accessible to agencies in other States which have executed agreements as required in paragraph (a)(4) of this section and to the Social Security Administration as specified in paragraph (a)(3) of this section for verifying eligibility and benefits under Titles II and XVI of the Social Security Act.

(c) *Alternate data sources.* The Secretary may, upon a State agency's application which is included in the attachment to the Plan of Operation specified in paragraph (i) of this section, permit a State agency to request and use income information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The application shall document that the alternate source or sources provides accurate and timely information that is as useful for verifying eligibility and benefit amounts. State agencies shall comply with the requirements specified in paragraph (a) of this section unless this application for an alternate source has been approved. The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the

Secretary of the Department of Labor prior to approval of any alternate data source.

(d) *Form of data requests and exchanges.* Requests for wage and benefit information and exchanges of eligibility and benefit information with the programs specified in paragraph (a) of this section shall be in the standardized formats established by the Secretary of Health and Human Services (in consultation with the Secretary) and required by the Secretary for SWICA, UC and other States, and in the formats prescribed by the Commissioners of SSA and IRS for SSA and IRS requests.

(e) *Requesting and using information for applicants.* State agencies shall request and use information about members of all applicant households as specified below.

(1) Information shall be requested at the next available opportunity after the date of application even if the applicant household has been determined eligible by that time. Information about members of applicant households who cannot provide SSNs at application shall be requested at the next available opportunity after the State agency is notified of their SSNs. Information received within the 30-day application period shall be used to determine household eligibility and benefits, if the information is received timely enough that it can be used for that determination. However, State agencies shall make eligibility and benefit determinations without waiting for receipt of IEVS data so as to comply with the promptness standard of § 273.2(g). Information received from a source after an eligibility determination has been made shall be used as specified in paragraphs (f) and (g) of this section.

(2) Information from the SWICA, from SSA and IRS, and claim information from the agency administering UIB shall be requested and used as specified in paragraph (e)(1) of this section. Requests to SWICAs shall access the most recent SWICA data available. Requests to SSA and IRS shall be submitted according to procedures specified by the respective Commissioners of those organizations.

(3) Any information other than wage and UIB which UC agencies may have and which State agencies determine would be useful in verifying eligibility or benefits of applicant households shall be requested by methods and at intervals to which State agencies and UC agencies agree and shall be used as specified in paragraph (e)(1) of this section; and

(4) Exchanges of information about applicant households with other programs specified in paragraph (a) of

this section shall be made as the State agency and other programs may agree.

(f) *Requesting and using information for recipients.* With respect to all members of recipient households, State agencies shall:

(1) Request information from the SWICA quarterly, such requests including all households which participated in any month of the quarter;

(2) Request information about household members from SSA data bases no later than the second month of the certification period, when requests at application did not establish automatic reporting to the State agency of changes in SSA data. Requests shall be submitted according to procedures specified by the Commissioner of SSA;

(3) Request information from IRS annually for all current recipients. Requests shall be submitted to IRS according to procedures specified by the Commissioner of IRS;

(4) Exchange information with other programs specified in paragraph (a) of this section as the State agency and these other programs may agree;

(5) Request information about Unemployment Insurance Benefits (UIB) from the agency administering that program as follows:

(i) For all household members about whom requests at application indicate no receipt of UIB, information shall be requested for the three months subsequent to the month of application or until the receipt of UIB is reported, whichever is earlier;

(ii) For all household members who report a loss of employment, information shall be requested for the three months subsequent to the month the loss is reported or until the receipt of UIB is reported, whichever is earlier; and

(iii) For all household members receiving UIB, information shall be requested monthly until UIB are exhausted; and

(6) Request from UC agencies any information other than UIB information which State agencies determine would be useful in verifying eligibility or benefits of recipient households. Requests shall be made by methods and at intervals to which the State agencies and the UC agencies agree.

(g) *Actions on recipient households.*

(1) Except as specified in paragraph (g)(2) of this section, State agencies shall initiate and pursue action on information about recipient households which is received from the sources specified in paragraph (f) of this section so that case action is complete within 30 days of receipt of that information. Case action shall include:

(i) Review of the information and comparison of it to case record information;

(ii) For all new or previously unverified information received, contact with the households and/or collateral contacts to resolve discrepancies as specified in §§ 273.2(f)(4)(iv) and 273.2(f)(9) (iii) and (iv); and

(iii) If discrepancies warrant reducing benefits or termination eligibility, notices of adverse action. Such adverse action would be effective according to § 273.12(c)(2) or the retrospective budgeting provisions at § 273.21.

(2) State agencies may complete the actions specified in paragraph (g)(1) of this section after the 30-day period specified therein on no more than 20 percent of the information items received from the data sources specified in paragraph (f) of this section if:

(i) The only reason that the actions cannot be completed is the nonreceipt of requested verification from collateral contacts; and

(ii) The actions are completed as specified in § 273.12 when verification from a collateral contact is received or in conjunction with the next case action when such verification is not received, whichever is earlier.

(3) When the actions specified in paragraphs (g) (1) or (2) of this section substantiate an overissuance, State agencies shall establish and take actions on claims as specified in § 273.18.

(4) State agencies shall use appropriate procedures to monitor the timeliness requirements in paragraphs (g) (1) and (2) of this section.

(h) *IEVS information and quality control.* The requirements of this section do not relieve the State agency of its responsibility for determining erroneous payments and/or its liability for such payments as specified in section 275 of this Part (which pertains to quality control) and in guidelines on quality control established under that section.

(i) *Plan of operations.* The requirements for the IEVS specified in this section shall be included in an attachment to the State agency's Plan of Operations as required in § 272.2(d). This document shall include a description of procedures used, and agreements with the other agencies and programs specified in paragraph (a) of this section, including steps taken to meet requirements of limiting disclosure and safeguarding of information obtained from food stamp households and third parties as specified in § 272.1. This document shall also include any of the material concerning alternate data sources as specified in paragraph (c) of this section.

(j) *Reports and documentation.* (1) The agency shall report as the Secretary prescribes for determining compliance with these regulations and evaluating the effectiveness of the income and eligibility verification system.

(2) The State agency shall document as required by § 273.2(f)(6) its use of information obtained through the IEVS both when an adverse action is and is not initiated.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

6. In § 273.2, paragraph (b) is amended by the addition of a sentence at the end; paragraph (f)(1)(v) is revised; paragraph (f)(4)(ii) is amended by removing everything after the fourth sentence; paragraph (f)(4)(iv) is revised; paragraph (f)(9) is revised; and the sixth sentence of paragraph (f)(4)(i)(B) is revised. The amendments and revisions read as follows:

§ 273.2 Application processing.

(b) *Food stamp application form.*

All applicants for food stamp benefits shall be notified at the time of application and at each recertification through a written statement on or provided with the application form that information available through the State income and eligibility verification system (IEVS) will be requested, used, and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits.

(f) *Verification.*

(1) *Mandatory verification.*

(v) *Social Security Numbers.* The State agency shall verify the Social Security Number(s) (SSN) reported by the household by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the SSN of a household member. Once an SSN has been verified, the State agency shall make a permanent annotation to its file to prevent the unnecessary reverification of the SSN in the future. The State agency shall accept as verified an SSN which has been verified by another program participating in the IEVS described in § 272.8. If an individual is unable to provide an SSN or does not have an SSN, the State agency shall require the individual to submit Form SS-5, Application for a

Social Security Number, to the SSA in accordance with procedures in § 273.6.

(4) *Sources of verification.*

(iv) *Discrepancies.* Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the IEVS, as specified in § 272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

(9) *Use of IEVS.*

(i) The State agency shall use information obtained through the IEVS to verify the eligibility and benefit level of applicant and participating households, in accordance with procedures specified in § 272.8.

(ii) The State agency may access data through the IEVS provided the disclosure safeguards and data exchange agreements required by Part 272 are satisfied.

(iii) The State agency shall take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtained through the IEVS which is considered verified upon receipt. This information is social security and SSI benefit information obtained from SSA, and AFDC benefit information and UIB information obtained from the agencies administering those programs. If the State agency has information that the IEVS-obtained information about a particular household is questionable, this information shall be considered unverified upon receipt and the State agency shall take action as specified in paragraph (f)(9)(iv) of this section.

(iv) Except as noted in this paragraph, prior to taking action to terminate, deny, or reduce benefits based on information obtained through the IEVS which is considered unverified upon receipt, State agencies shall independently verify the information. Such unverified information is unearned income information from IRS, wage information from SSA and SWICAs, and questionable IEVS information discussed in paragraph (f)(9)(iii) of this section. Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would

be countable income or resources for food stamp purposes, and the period during which such access occurred. Except with respect to unearned income information from IRS, if a State agency has information which indicates that independent verification is not needed, such verification is not required.

(v) The State agency shall obtain independent verification of unverified information obtained from IEVS by means of contacting the household and/or the appropriate income, resource or benefit source. If the State agency chooses to contact the household, it must do so in writing, informing the household of the information which it has received, and requesting that the household respond within 10 days. If the household fails to respond in a timely manner, the State agency shall send it a notice of adverse action as specified in § 273.13. The State agency may contact the appropriate source by the means best suited to the situation. When the household or appropriate source provides the independent verification, the State agency shall properly notify the household of the action it intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

(i) *Expedited Service.*

(4) *Special procedures for expediting service.*

(i)

(B) Those household members unable to provide the required SSN's or who do not have one prior to the first full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirements with respect to SSN's specified in § 273.6(d).

7. Section 273.6 is revised in its entirety to read as follows:

§ 273.6 Social security numbers.

(a) *Requirements for participation.*

The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or failure without good cause to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained.

(b) *Obtaining SSNs for food stamp household members.* (1) For those individuals who provide SSNs prior to

certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall:

(i) If an enumeration agreement with SSA exists, complete the application for an SSN, Form SS-5. To complete Form SS-5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS-5 to SSA.

(ii) If no enumeration agreement exists, an individual must apply at the SSA, and the State agency shall arrange with SSA to be notified directly of the SSN when it is issued. The State agency shall inform the household where to apply and what information will be needed, including any which may be needed for SSA to notify the State agency of the SSN. The State agency shall advise the household member that proof of application from SSA will be required prior to certification. SSA normally uses the Receipt of Application for a Social Security Number, Form SSA-5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(3) The State agency shall follow the procedures described in paragraphs (b)(2) (i) and (ii) of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

(c) *Failure to comply.* If the State agency determines that a household member has refused or failed without good cause to provide or apply for an SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual for whom the SSN is not provided and not to the entire household. The earned or unearned income and resources of an individual disqualified from the household for failure to comply with this requirement shall be counted as household income and resources to the extent specified in § 273.11(c) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, SSA and the State agency (especially if the State agency was designated to send the SS-5 to SSA and either did not process the SS-5 or did not process it in a timely manner). Documentary evidence or collateral information that the household member has applied for an SSN or made every

effort to supply SSA with the necessary information to complete an application for an SSN shall be considered good cause for not complying timely with this requirement. Good cause does not include delays due to illness, lack of transportation or temporary absences, because SSA makes provisions for mail-in applications in lieu of applying in person. If the household member can show good cause why an application for a SSN has not been completed in a timely manner, that person shall be allowed to participate for one month in addition to the month of application. If the household member applying for an SSN has been unable to obtain the documents required by SSA, the State agency caseworker should make every effort to assist the individual in obtaining these documents. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

(f) *Use of SSNs.* The State agency is authorized to use SSNs in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of Health and Human Services, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under Title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSNs to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households. In particular, SSNs shall be used by the State agency to request and exchange information on individuals through the IEVS as specified in § 272.8.

(g) *Entry of SSNs into automated data bases.* State agencies with automated food stamp data bases containing household information shall enter all SSNs obtained in accordance with § 273.6(a) into these files.

PART 275—PERFORMANCE REPORTING SYSTEM

8. In § 275.12, paragraph (c) introductory text is amended by the addition of a sentence following the first sentence. The new sentence reads as follows:

§ 275.12 Review of active cases.

(c) *Field investigation.* * * * A full field investigation shall include a review of any information pertinent to a particular case which is available through the State Income and Eligibility Verification System (IEVS) as specified in § 272.8. * * *

Dated: January 30, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

List of Subjects in 29 CFR Part 603

Unemployment-compensation, Labor.

For the reasons set forth in the preamble, a new Part 603 is added to Chapter V of Title 20 of the Code of Federal Regulations as set out below.

Signed at Washington, D.C., on February 18, 1986.

William E. Brock,

Secretary of Labor.

PART 603—INCOME AND ELIGIBILITY VERIFICATION SYSTEM

Sec.

603.1 Purpose.

Subpart A—Income and Eligibility Verification System

603.2 Definitions.

603.3 Eligibility condition for claimants.

603.4 Notification to claimants.

603.5 Disclosure of information.

603.6 Agreement between State unemployment compensation agency and requesting agency.

603.7 Protection of confidentiality.

603.8 Obtaining information from other agencies and crossmatching with wage information.

603.9 Effective date of rule.

Subpart B—Quarterly Wage Reporting

603.20 Effective date of rule.

603.21 Alternative system.

Authority: Sec. 1102, Social Security Act, ch. 531, 49 Stat. 647, as amended (42 U.S.C. 1302); Reorganization Plan No. 2 of 1949, 63 Stat. 1065, 14 FR 5225.

§ 603.1 Purpose.

(a) Section 2651 of Pub. L. 98-369 (the Deficit Reduction Act of 1984) amended title XI of the Social Security Act to include a requirement that States have an income and eligibility verification system in effect which would be used in verifying eligibility for, and the amount of, benefits available under several Federally assisted programs including the Federal-State unemployment compensation program. The Act requires that employers in each State make quarterly wage reports to a State agency, which may be the State unemployment compensation agency, and that wage information and benefit information obtained from other agencies be used in verifying eligibility for benefits. The requirement of quarterly wage reporting may be waived if the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) determines the State has in effect an alternative system which is as effective and timely as quarterly wage reporting for the purposes of providing employment related income and eligibility data.

(b) Section 2651(d) of Pub. L. 98-369 added a new section 303(f) of the Social Security Act (42 U.S.C. 503(f)), to provide that the agency charged with the administration of the State unemployment compensation law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of Section 1137 of the Social Security Act, as added by Pub. L. 98-369. The regulations in this Part are issued to implement this requirement.

Subpart A—Income and Eligibility Verification System**§ 603.2 Definitions.**

For the purposes of this Part:

(a) "State unemployment compensation agency" means the agency charged with the administration of the unemployment compensation law approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304).

(b) "Wage information" means information about wages as defined in the State's unemployment compensation law and includes the Social Security Number (or numbers, if more than one) and quarterly wages of an employee, and the name, address, State, and (when known) Federal employer identification number of an employer reporting wages under a State unemployment compensation law, except that in a State

in which wages are not required to be reported under the unemployment compensation law, "wage information" means:

(1) That wage information which is reported under provisions of State law which fulfill the requirements of section 1137 of the Social Security Act; or

(2) That information which is obtained through an alternative system which fulfills the requirements of section 1137 of the Social Security Act.

(c) "Claim information" means information regarding:

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

(2) The amount of compensation the individual is receiving or is entitled to receive;

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

(4) Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay.

(5) Any other information contained in the records of the State unemployment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

(d) "Requesting agency" means:

(1) Any State or local agency charged with the responsibility of enforcing the provisions of the Aid to Families with Dependent Children program under a State plan approved under part A of title IV of the Social Security Act;

(2) Any State or local agency charged with the responsibility of enforcing the provisions of the Medicaid program under a State plan approved under title XIX of the Social Security Act;

(3) Any State or local agency charged with the responsibility of enforcing the provisions of the Food Stamp program under the Food Stamp Act of 1977;

(4) Any State or local agency charged with the responsibility of enforcing a program under a plan approved under title I, X, XIV, or XVI of the Social Security Act;

(5) Any State or local child support enforcement agency charged with the responsibility of enforcing child support obligations under a plan approved under part D of title IV of the Social Security Act; and

(6) The Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under titles II and XVI of the Social Security Act (Sec. 1137(a)).

§ 603.3 Eligibility condition for claimants.

(a) The State unemployment compensation agency shall require, as a condition of eligibility for

unemployment benefits, that each claimant for benefits furnish to the agency his/her social security number (or numbers if he/she has more than one such number), and the agency shall utilize such numbers in the administration of the unemployment compensation program so as to associate the agency's records pertaining to each claimant with the claimant's social security number(s).

(b) If the State agency determines that a claimant has refused or failed to provide a Social Security Number, then that individual shall be ineligible to participate in the unemployment compensation program.

(c) Any claimant held ineligible for not supplying a social security number may become eligible upon providing the State agency with such number retroactive to the extent permitted under State law. (Sec. 1137(a)(1)).

§ 603.4 Notification to claimants.

Claimants shall be notified at the time of filing an initial claim for benefits through a written statement on or provided with the initial claim form and periodically thereafter that information available through the income and eligibility verification system will be requested and utilized by requesting agencies as defined in section 603.2(d) (Sec. 1137(a)(6)). Provisions of a printed notice on or attached to any subsequent additional claims will satisfy the requirement for periodic notice thereafter.

§ 603.5 Disclosure of information.

The State unemployment compensation agency will disclose to authorized requesting agencies, as defined in section 603.2(d), which have entered into an agreement in accordance with this Part, wage and claim information as defined herein contained in the records of such State agency as is deemed by the requesting agency to be needed in verifying eligibility for, and the amount of, benefits. Standardized formats established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) will be adhered to by the State unemployment compensation agency. (Sec. 1137(a)(4)).

§ 603.6 Agreement between State unemployment compensation agency and requesting agency.

(a) The State unemployment compensation agency will enter into specific written agreements with any requesting agency as defined in this Part.

(b) The agreements will include, but need not be limited, to the following:

(1) The purposes for which requests will be made and the specific information needed;

(2) Identification of all agency officials, by position, with authority to request information;

(3) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested information;

(4) Basis for establishing the reporting periods for which information will be provided;

(5) Provisions for determining appropriate reimbursement from the requesting agency for the costs incurred in providing data, including any new developmental costs associated with furnishing data to the requesting agency and calculated in accordance with the provisions of OMB Circular A-87;

(6) Safeguards to ensure that information obtained from the State unemployment compensation agency will be protected against unauthorized access or disclosure. At a minimum, such procedures will comply with the requirements of section 603.7.

(c) The requirements in paragraph (a) and (b) of this section shall also apply to requesting agencies receiving information from a State unemployment compensation agency in another State and shall be administered by the State unemployment compensation agency disclosing the information (sec. 1137(a)(4) and (a)(7)).

§ 603.7 Protection of confidentiality.

(a) State unemployment compensation agencies shall require requesting agencies receiving information under this Part to comply with the following measures to protect the confidentiality of the information against unauthorized access or disclosure:

(1) The information shall be used only to the extent necessary to assist in the valid administrative needs of the program receiving such information and shall be disclosed only for these purposes as defined in this agreement;

(2) The requesting agency shall not use the information for any purposes not specifically authorized under an agreement that meets the requirements of section 603.6;

(3) The information shall be stored in a place physically secure from access by unauthorized persons;

(4) Information in electronic format, such as magnetic tapes or discs, shall be stored and processed in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminal or other means;

(5) Precautions shall be taken to ensure that only authorized personnel are given access to on-line files;

(6)(i) The requesting agency shall instruct all personnel with access to the information regarding the confidential nature of the information, the requirements of this Part, and the sanctions specified in State unemployment compensation laws against unauthorized disclosure of information covered by this Part, and any other relevant State statutes, and

(ii) The head of each State agency shall sign an acknowledgment on behalf of the entire agency attesting to the agency's policies and procedures regarding confidentiality.

(b) Any requesting agency is authorized to redisclose the information only as follows:

(1) Any wage or claim information may be given to the individual who is the subject of the information;

(2) Information about an individual may be given to an attorney or other duly authorized agent representing the individual if the individual has given written consent and the information is needed in connection with a claim for benefits against the requesting agency; and

(3) Any wage or claim information may be given to another requesting agency as defined in this Part or to any criminal or civil prosecuting authorities acting for or on behalf of the requesting agency if provision for such redisclosure is contained in the agreement between the requesting agency and the State unemployment compensation agency.

(c) The requesting agency shall permit the State unemployment compensation agency to make onsite inspections to ensure that the requirements of State unemployment compensation laws and Federal statutes and regulations are being met (sec. 1137(a)(5)(B)).

§ 603.8 Obtaining information from other agencies and Crossmatching with wage information.

(a) The State unemployment compensation agency shall obtain such information from the Social Security administration and any requesting agency as may be needed in verifying eligibility for, and the amount of, benefits.

(b) To the extent that such information shall be determined likely to be productive in identifying ineligibility for benefits and preventing incorrect payments, the State unemployment compensation agency shall crossmatch quarterly wage information with unemployment benefit payment information (sec. 1137(a)(2)).

(c) To the extent necessary, the United States Department of Labor may amplify on the requirements for state compliance with this section in

instructions issued and published for comment in the Federal Register under the provisions of section 1137(a)(2) of the Social Security Act.

§ 603.9 Effective date of rule.

The effective date of this Subpart A rule is May 29, 1986, after consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, may by waiver grant a delay in this effective date if the State submits within 90 days of publication of this rule in final form a plan describing a good faith effort to comply with the requirements of section 1137 (a) and (b) of the Social Security Act through but not beyond September 30, 1986.

Subpart B—Quarterly Wage Reporting

§ 603.20 Effective date of rule.

The requirement that employers in a State report quarterly wage information to a State agency (which may be the State unemployment compensation agency), is effective September 30, 1988 (sec. 1137(a)(3)).

§ 603.21 Alternative system.

The Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provision that employers in a State are required to make quarterly wage reports to a State agency if the Secretary determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in section 1137 of the Social Security Act. Criteria for such waiver and the date for submitting requests for such waiver will be issued, if necessary, by the United States Department of Labor and published for comment in the Federal Register.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 435

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

42 CFR Chapter IV is amended as set forth below:

A. Part 431 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. Subpart A is amended as set forth below:

Subpart A—Single State Agency

a. The authority citation for Subpart A continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

b. In § 431.17, paragraphs (b) and (b)(1) are reprinted for the reader's comprehension, paragraph (b)(1)(iv) is revised, and paragraph (b)(1)(vi) is added to read as follows:

§ 431.17 Maintenance of records.

(b) *Content of records.* A State plan must provide that the Medicaid agency will maintain or supervise the maintenance of the records necessary for the proper and efficient operation of the plan. The records must include—

(1) Individual records on each applicant and recipient that contain information on—

(iv) Provision of medical assistance;

(vi) The disposition of income and eligibility verification information received under §§ 435.940 through 435.960 of this subchapter; and

2. Subpart F is amended as set forth below:

Subpart F—Safeguarding Information on Applicants and Recipients

a. The authority citation for Subpart F continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

b. Section 431.300 is revised to read as follows:

§ 431.300 Basis and purpose.

(a) Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. This subpart specifies State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

(b) Section 1137 of the Act, which requires agencies to exchange information in order to verify the income and eligibility of applicants and recipients (see § 435.940ff.), requires State agencies to have adequate safeguards to assure that—

(1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l) of the Internal Revenue Code of 1954 is exchanged only with agencies authorized to receive that information under that section of the Code; and

(2) The information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

c. The introductory language of § 431.305(b) is repeated for the reader's convenience and a new paragraph (b)(6) is added as follows:

§ 431.305 Types of information to be safeguarded.

(b) This information must include at least—

(6) Any information received for verifying income eligibility and amount of medical assistance payments (see § 435.940ff.). Income information received from SSA or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

d. Section 431.306 is amended by revising paragraph (d) and adding a new paragraph (g) as follows:

§ 431.306 Release of information.

(d) The agency must obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment under section 1137 of this Act and §§ 435.940–435.965 of this chapter.

If, because of an emergency situation, time does not permit obtaining consent before release, the agency must notify the family or individual immediately after supplying the information.

(g) Before requesting information from, or releasing information to, other agencies to verify income, eligibility and the amount of assistance under §§ 435.940–435.965 of this chapter, the agency must execute data exchange agreements with those agencies, as specified in § 435.945(f).

3. Subpart P is amended as set forth below:

Subpart P—Quality Control

a. The authority citation for Subpart P continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

b. Section 431.800 is amended by revising paragraph (h) as follows:

§ 431.800 Medical quality control (MQC) system.

(h) *Access to records.* The agency, upon request, must provide HHS staff with access to all records pertaining to its MQC reviews to which the State has access, including information available under Part 435, Subpart J, of this chapter.

c. Section 431.804 is amended by revising paragraph (c)(6) as follows:

§ 431.804 Disallowance of Federal financial participation for erroneous State payments (effective January 1, 1984).

(c) Setting of State's payment error rate.

(6) If a State fails to cooperate in completing a valid MQC sample or individual reviews in a timely and appropriate fashion as required, which includes obtaining and using information available under Part 435, Subpart J, of this chapter, HCFA will establish the State's payment error rate based on either—

(i) A special sample or audit;
(ii) The Federal subsample; or
(iii) Other arrangements as the Administrator may prescribe.

B. Part 435 is amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for Part 435, Subpart J, is amended by revising the titles of §§ 435.912 and 435.919, by adding a new undesignated centered heading immediately following the title of § 435.930, and by adding titles for new §§ 435.940, 435.945, 435.948, 435.952, 435.955, 435.960, and 435.965 as follows:

Subpart J—Eligibility in the States and District of Columbia

Sec.
435.912 Notice of agency's decision concerning eligibility.

* * * * *
435.919 Timely and adequate notice concerning adverse actions.

Income and Eligibility Verification

435.940 Basis and scope.
435.945 General requirements.
435.948 Requesting information.
435.952 Use of information.
435.955 Additional requirements regarding the use of information released by the Department of the Treasury.
435.960 Standardized formats for maintaining information for verifying income and eligibility.
435.965 Delay of effective date.

3. In § 435.4, the definition of "SWICA" is added, alphabetically after "SSI," as follows:

§ 435.4 [Amended]

"SWICA" means the State wage information collection agency under section 1137(a) of the Act. It is the State agency administering the State unemployment compensation law; a separate agency administering a quarterly wage reporting system; or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data.

4. In § 435.910, the introductory language to paragraph (b) is repeated for the convenience of the reader, paragraphs (a) and (b)(3), the introductory language of paragraphs (a) and (e)(3) are revised to read as follows, paragraphs (b)(1), (c) and (d) are removed and reserved, and a new paragraph (g) is added as follows:

§ 435.910 Use of social security number.

(a) The agency must require, as a condition of eligibility, that each individual (including children) requesting Medicaid services furnish each of his or her social security numbers (SSNs).

(b) The agency must advise the applicant of—

(1) [Reserved]

(3) The uses the agency will make of each SSN, including its use for verifying income, eligibility, and amount of medical assistance payments under §§ 435.940 through 435.960.

(c) [Reserved]

(d) [Reserved]

(e) If an applicant cannot recall his SSN or SSNs or has not been issued a SSN the agency must—

(3) Either send the application to SSA or, if there is evidence that the applicant has previously been issued a SSN, request SSA to furnish the number.

(g) The agency must verify each SSN of each applicant and recipient with SSA, as prescribed by the Commissioner, to insure that each SSN furnished was issued to that individual, and to determine whether any others were issued.

5. The title of § 435.912 is revised as follows:

§ 435.912 Notice of agency's decision concerning eligibility.

6. The title of § 435.919 is revised to read as follows:

§ 435.919 Timely and adequate notice concerning adverse actions.

7. Section 435.920 is amended by revising paragraph (b) as follows:

§ 435.920 Verification of SSNs.

(b) If the case record does not contain the required SSNs, the agency must require the recipient to furnish them and meet other requirements of § 435.910.

8. A new undesignated centered heading and new §§ 435.940–435.965 are added as follows:

Income and Eligibility Verification Requirements

§ 435.940 Basis and Scope.

(a) Section 1137 of the Act requires certain Federally-funded, State-administered public assistance programs to establish procedures for obtaining, using and verifying information relevant to determinations as to eligibility and the amount of assistance. Section 1902(a)(4) of the Act allows the Secretary to prescribe methods of administration found necessary for the proper and efficient operation of a State's Medicaid plan.

(b) The agency must maintain information, as enumerated in § 435.960, to exchange for the purpose of enabling any agency or program referenced in § 435.945(b) to verify income, eligibility of, and the amount of assistance for its applicants and recipients.

§ 435.945 General requirements.

(a) The agency must request and use information timely in accordance with §§ 435.948 and 435.952 of this subpart for verifying Medicaid eligibility and the amount of medical assistance payments.

(b) The agency must furnish to other agencies in the State and in other States and to Federal programs income, eligibility and medical assistance payment information for verifying eligibility or benefit amounts for the programs listed in § 435.948(a)(6) of this subpart. In addition, the agency must furnish income and eligibility information to—

(1) The child support program under part D of title IV of the Act; and

(2) SSA for old age, survivors and disability benefits under title II and for SSI benefits under title XVI of the Act.

(c) The agency must, upon request, reimburse another agency listed in § 435.948(a)(6) of this subpart or paragraph (b) of this section for reasonable costs incurred in furnishing information, including new developmental costs associated with furnishing the information to another agency.

(d) The agency must inform all applicants in writing at the time of application that the agency will obtain and use information available to it under section 1137 of the Act to verify income, eligibility and the correct amount of medical assistance payments. The agency must give each recipient the same notice when it redetermines eligibility. The requirements in this paragraph do not apply in the case of applicants or recipients whose eligibility is determined by AFDC or by SSA under section 1634 of the Act.

(e) The agency must report as the Secretary prescribes for the purposes of determining compliance with §§ 431.305, 431.800, 435.910, 435.919 and 435.940 through 435.965 of this chapter and of evaluating the effectiveness of the income and eligibility verification system.

(f) The agency must execute written agreements with other agencies before releasing data to or requesting data from, those agencies. The agreements, at a minimum, must specify:

(1) The information to be exchanged;

(2) The titles of all agency officials with the authority to request income and eligibility information;

(3) The methods, including the formats to be used, and the timing for requesting and providing the information (see also paragraph (f)(6) of this section);

(4) The safeguards limiting the use and disclosure of the information as required by Federal or State law or regulations;

(5) The method, if any, the agency will use to reimburse reasonable costs of furnishing the information; and

(6) In the case of an agreement between a SWICA or a UC agency and

the Medicaid agency, that the Medicaid agency will obtain information on applicants at least twice monthly.

(g) SWICA that does not use the quarterly wages reported by employers as required by Section 1137 of the Act of unemployment insurance benefit calculations must maintain wage information that:

(1) Contains the SSN, full name, wages earned for the period of the report, and an identifier of the employer;

(2) Includes all employers covered by the States' UC law;

(3) Accumulates earnings reported by employers for no longer periods than calendar quarters;

(4) Is reported to the SWICA within 30 days after the end of the quarter;

(5) Is machine readable; and

(6) Is accessible to agencies in other States that have executed agreements as required in § 435.945(f) of this chapter and to SSA for use in making eligibility or benefit determinations under Title II or XVI of the Act.

§ 435.948 Requesting information

(a) Except as provided in paragraphs (d), (e), and (f) of this section, the agency must request information from the sources specified in this paragraph for verifying Medicaid eligibility and the correct amount of medical assistance payments for each applicant (unless obviously ineligible on the face of his or her application) and recipient. The agency must request—

(1) State wage information maintained by the SWICA during the application period and at least on a quarterly basis;

(2) Information about net earnings from self-employment, wage and payment of retirement income, maintained by SSA and available under Section 6103(l)(7)(A) of the Internal Revenue Code of 1954, for applicants during the application period and for recipients for whom the information has not previously been requested;

(3) Information about benefit and other eligibility related information available from SSA under titles II and XVI of the Social Security Act for applicants during the application period and for recipients for whom the information has not previously been requested;

(4) Unearned income information from the Internal Revenue Service available under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954, during the application period and at least yearly;

(5) Unemployment compensation information maintained by the agency administering State unemployment compensation laws (under the provisions of section 3304 of the Internal

Revenue Code and section 303 of the Act) as follows:

(i) For an applicant, during the application period and at least for each of the three subsequent months;

(ii) For a recipient that reports a loss of employment, at the time the recipient reports that loss and for at least each of the three subsequent months.

(iii) For an applicant or a recipient who is found to be receiving unemployment compensation benefits, at least for each month until the benefits are reported to be exhausted.

(6) Any additional income, resource, or eligibility information relevant to determinations concerning eligibility or correct amount of medical assistance payments available from agencies in the State or other States administering the following programs as provided in the agency's State plan:

(i) AFDC;

(ii) Medicaid;

(iii) State-administered supplementary payment programs under Section 1616(a) of the Act;

(iv) SWICA;

(v) Unemployment compensation;

(vi) Food stamps; and

(vii) Any State program administered under a plan approved under Title I (assistance to the aged), X (aid to the blind), XIV (aid to the permanently and totally disabled), or XVI (aid to the aged, blind, and disabled in Puerto Rico, Guam, and the Virgin Islands) of the Act.

(b) The agency must request information on applicants from the sources listed in paragraph (a)(1) through (a)(5) of this section at the first opportunity provided by these sources following the receipt of the application. If an applicant cannot provide an SSN at application, the agency must request the information at the next available opportunity after receiving the SSN.

(c) The agency must request the information required in paragraph (a) of this section by SSN, using each SSN furnished by the individual or received through verification.

(d) *Exception:* In cases where the individual is institutionalized, the agency needs to obtain and use information from SWICA only during the application period and on a yearly basis, and from unemployment compensation agencies only during the application period. An individual is institutionalized for purposes of this section when he or she is required to apply his or her income to the cost of medical care as required by §§ 435.725, 435.733, and 435.832.

(e) *Exception: Alternate sources.* (1) The Secretary may, upon application from a State agency, permit an agency to

request and use income information from a source or sources alternative to those listed in paragraph (a) of this section. The agency must demonstrate to the Secretary that the alternative source(s) is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor before determining whether an agency may use an alternate source.

(2) The agency must continue to meet the requirements of this section unless the Secretary has approved the request.

(f) *Exception:* If the agency administering the AFDC program, or SSA under section 1634 of the Act, determines the eligibility of an applicant or recipient, the requirements of this section do not apply to that applicant or recipient.

§ 435.952 Use of information.

(a) The agency must review and compare against the casefile any information received under §§ 435.940 through 435.960 to determine whether it affects the applicant's or recipient's eligibility or amount of medical assistance payment. The agency must also verify the information if determined appropriate by agency experience or if required by § 435.955.

(b) For applicants, if the information is received during the application period, it must be used, to the extent possible, making eligibility determinations. If it is received after the eligibility determination, it must be used as specified for recipients in paragraphs (c) and (d) of this section.

(c) Except as specified in paragraph (d) of this section, for recipients, the agency must, within 30 days of receipt of an item of information, request verification (if appropriate), determine whether the information affects eligibility or the amount of medical assistance payment, and make an entry in the case file that no action is necessary or notify the recipient of any adverse action the agency intends to take.

(d) Subject to paragraph (e) of this section, if the agency does not receive requested third party verification within the 30 day period after receipt of information, the agency may determine whether the information affects eligibility or correct amount of medical assistance payment after the 30 day period. However, the agency must make any delayed determinations permitted under this paragraph—

(1) Promptly, as required by § 435.916, if the verification is received before the next redetermination; or

(2) In conjunction with the next redetermination if no verification is received before that redetermination.

(e) The number of determinations delayed beyond 30 days from receipt of an item of information (as permitted by paragraph (d) of this section) must not exceed twenty percent of the number of items of information received on all recipients.

(f) The agency must use appropriate procedures to monitor the timeliness requirements of this section.

(g) The requirements of this section do not relieve the agency of its responsibility for determinations of erroneous payments or the agency's liability for those erroneous payments, as defined in Subpart P of this chapter.

§ 435.955 Additional requirements regarding the use of information released by the Department of the Treasury.

(a) Based on information concerning an applicant's or recipient's unearned income the agency receives from the Department of Treasury (Internal Revenue Service) (under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954), the agency may not terminate, deny, suspend, or reduce benefits to that individual until it has taken appropriate steps to verify the information, independently, relating to—

(1) The amount of the income and resource that generated the income involved;

(2) Whether the applicant or recipient actually has (or had) access to the resource of income (or both) for his or her own use; and

(3) The period or periods when the individual actually had the resource or income or both.

(b) The agency must verify the information by either—

(1) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income and resource that generated the income; or

(2) Sending the applicant or recipient a letter informing that individual of the information received and asking him or her to respond within a specified period. The letter must clearly explain the information the agency has and its possible relevance to the individual's past or future eligibility, and be as neutral in tone as possible.

(c)(1) If the source of the unearned income or the applicant or recipient verifies the information, and the agency intends to reduce, suspend, terminate or deny medical assistance payments based on the information, the agency must send the applicant or recipient a notice of the action to be taken and include information on the right to

appeal and opportunity for a hearing under §§ 431.200 through 431.250 of this chapter (see also § 435.912 and 435.919).

(2) If the applicant or recipient fails to respond after reasonable attempts to contact him or her, the agency must proceed to deny, terminate, reduce or suspend benefits based on the applicant or recipient's failure to cooperate.

(3) If the applicant or recipient disputes the information, the agency must obtain evidence (from the source of the unearned income, applicant or recipient, or otherwise) to substantiate any negative case action that it may take.

§ 435.460 Standardized formats for obtaining and using information for verifying income and eligibility.

(e) The agency must maintain for all applicants and recipients within an agency file the SSN, surname and other data elements in a format that at a minimum allows the agency to obtain and use eligibility and income information from the agencies or programs referenced in § 435.945(b). The agency must request information from—

(1) SWICA, unemployment compensation agencies, and agencies of other States, as prescribed by the Secretary;

(2) SSA, as prescribed by the Commissioner of SSA; and

(3) The Internal Revenue Service, as prescribed by the Commissioner of the Internal Revenue Service.

(b) Release of income and eligibility information to, or receipt of information from, other agencies in the State and in other States must be made in the manner prescribed by the Secretary and must be completed in a timely manner.

§ 435.955 Delay of effective date.

(a) If the agency submits, by May 29, 1986, a plan describing a good faith effort to come into compliance with the requirements of Section 1137 of the Act and of §§ 435.910 and 435.940 through 435.960 of this subpart, the Secretary may, after consultation with the Secretary of Agriculture and the Secretary of Labor, grant a delay in the effective date of § 435.910 and §§ 435.940 through 435.960, but not beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of Section 1137(c) of the Act, which is implemented by § 435.955 (a) and (c). (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medical Assistance)

Dated: January 31, 1986.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: February 11, 1986.

Otis R. Bowen, M.D.,
Secretary.

Social Security Administration

45 CFR Parts 205, 206 and 232

The asterisks used throughout the regulatory text represent material within a codified paragraph or section that is not being amended by these final rules.

These regulations are issued under the authority of section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended, 42 U.S.C. 1302.

Catalog of Federal Domestic Assistance Programs No. 13.808 Public Assistance Maintenance Assistance (State Aid)

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family assistance, Grant programs-social programs.

Dated: January 30, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: February 11, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

Therefore, 45 CFR Parts 205, 206 and 232 are amended as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 205 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. Section 205.40 is amended by revising paragraphs (b)(1)(v) and (c)(3)(ii) to read as follows:

§ 205.40 Quality Control System.

(b) *State plan requirements.* * * *
(1) * * *
(v) It shall assure access by HHS staff to State and local records relating to public assistance, to recipients, and to third parties, including information available under § 205.55.

(c) * * *
(3) * * *
(ii) The fact that the agency has complied with the requirements for redetermination of eligibility (see Section 206.10(a)(9) of this chapter) or for timely action on information from the State's Income and Eligibility Verification System (IEVS) (see section 205.56(a)(1)) has no bearing on, and does not relieve the State agency of its responsibility for, the determination of erroneous payments or its liability for such payments; and

3. Section 205.44 is amended by revising paragraph (d)(2) to read as follows:

§ 205.44 Reduction in Federal financial participation (FFP) for incorrect payments made by States after September 1984.

(d) *How we will measure a State's performance.* * * *

(2) If a State fails to complete a valid and reliable sample in accordance with the prescribed QC procedures and deadlines, which includes obtaining and using information available under § 205.55, as required by § 205.40, for any assessment period, we will notify the State of its failure and provide the State the opportunity to negotiate a solution regarding the timely completion of its sample. Where a State is unable to negotiate a solution or fails to carry out a negotiated solution we will assign to the State an error rate based on the best data reasonably available, including data obtained from any one or more of the following methods, error rate information for past sample periods, a partially completed State sample, a Federal subsample of completed State cases, a supplemental Federal sample, a Federal audit, and an audit conducted through a contractual agreement with a third party.

4. Section 205.50 is amended by adding paragraph (a)(1)(i)(F) and by revising paragraphs (a)(2)(i)(B) and (a)(3) (ii) and (iii) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* * * *
(1) * * *
(i) * * *
(F) The administration of a State unemployment compensation program.

(2) * * *
(i) * * *
(B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to § 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;

(iii) Except in the case of information requested pursuant to §§ 235.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.

(3) * * *
(ii) All information obtained pursuant to the income and eligibility verification requirements at §§ 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under §§ 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

5. Section 205.51 is revised to read as follows:

§ 205.51 Income and eligibility verification requirements.

(a) A State plan under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide that there be an Income and Eligibility Verification System in the State. Income and Eligibility Verification System (IEVS) means a system through which the State agency:

(1) Co-ordinates data exchanges with other Federally-assisted benefit

programs covered by section 1137(b) of the Act;

(2) Requests and uses income and benefit information as specified in section 1137(a)(2) of the Act and §§ 205.55 and 205.56; and

(3) Adheres to standardized formats and procedures in exchanging information with the other programs and agencies and in providing such information as may be useful to assist Federal, State and local agencies in the administration of the child support program and the Social Security Administration in the administration of the title II and title XVI (SSI) programs. The State agency (UC) information from the State Wage Information Collection Agency, described in paragraph (b) of this section; from the agency administering the State's unemployment compensation program (UC) under section 3304 of the Internal Revenue Code; from agencies in other States cited in § 205.55(a)(5), as set forth by the Secretary; from SSA, as set forth by the Commissioner of Social Security; and from IRS, as set forth by the Commissioner of Internal Revenue.

(b) A State plan under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide that, as part of its Income and Eligibility Verification System, there be a State Wage Information Collection Agency in the State. State Wage Information Collection Agency (SWICA) means the State agency receiving quarterly wage reports from employers in the State (which may be the agency administering the State's unemployment compensation program), or an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility information.

(c) Wage information maintained by a SWICA which receives quarterly wage reports from employers but does not use these reports for computation of employment compensation shall:

(1) Contain the social security number, first and last name and middle initial, wages earned for the period of the report, and an identifier of the employer (such as name and address) for each employee;

(2) Include all employers covered by the State's UC law and require such employers to report wage information (as specified above) for each employee within 30 days from the end of each calendar quarter;

(3) Accumulate earnings reported by employers for periods no longer than calendar quarters;

(4) Be machine readable; i.e., maintained in a fashion that permits automated processing; and

(5) Be available to other agencies in the State, to agencies in other States, and to Social Security Administration for establishing or verifying eligibility and benefit amounts under titles II and XVI of the Social Security Act, pursuant to agreements as required in § 205.58.

(d) A State shall obtain prior written approval from the Department, where appropriate, in accordance with 45 CFR 95.611, for any new developmental costs for automatic data processing equipment and services incurred in meeting IEVS requirements.

6. A new § 205.55 is added to read as follows:

§ 205.55 Requirements for requesting and furnishing eligibility and income information.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Except as provided in paragraph (b), the State agency will request through the IEVS:

(1) Wage information from the SWICA for all applicants at the first opportunity following receipt of the application and for all recipients on a quarterly basis.

(2) Unemployment compensation information from the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 and section 303 of the Act as follows:

(i) For applicants at the first opportunity following receipt of the application and in each of the first three months in which the individual is receiving aid, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until benefits are exhausted; and

(ii) In each of the first three months following any recipient-reported loss of employment, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until the benefits are exhausted.

(3) All available information maintained by the Social Security Administration for all applicants at the first opportunity following receipt of the application in the manner set forth by the Commissioner of Social Security. The State agency will also request such information for all recipients as of the effective date of this provision for whom

such information has not previously been requested.

(4) Unearned income information from the Internal Revenue Service available under section 6103 (1)(7)(B) of the Internal Revenue Code of 1954, for all applicants at the first opportunity following receipt of the application for all recipients on a yearly basis. The request shall be made at the time and in the manner set forth by the Commissioner of Internal Revenue.

(5) As necessary, any income or other information affecting eligibility available from agencies in the State or other States administering:

(i) An AFDC program (in another State) under title IV-A of the Social Security Act;

(ii) A Medicaid program under title XIX of the Social Security Act;

(iii) An unemployment compensation program (in another State) under section 3304 of the Internal Revenue Code of 1954;

(iv) A Food Stamp program under the Food Stamp Act of 1977, as amended;

(v) Any State program administered under plan approved under Title I, X, XIV, or XVI (AABD) of the Social Security Act; and

(vi) A SWICA (in another State).

(b)(1) With respect to individuals who cannot furnish an SSN at application, information specified in paragraph (a) will be requested at the first opportunity provided by each source after the State agency is provided with the SSN.

(2) For the purposes of this section, applicants and recipients shall also include any other individuals whose income or resources are considered in determining the amount of assistance, if the State agency has obtained the SSN of such individuals.

(c) The State agency must furnish, when requested, income, eligibility and benefit information to:

(1) Agencies in the State or other States administering the programs cited in paragraph (a)(5) of this section, in accordance with specific agreements as described in § 205.58;

(2) The agency in the State or other States administering a program under title IV-D of the Social Security Act; and

(3) The Social Security Administration for purposes of establishing or verifying eligibility or benefit amounts under title II and XVI (SSI) of the Social Security Act.

(d) The Secretary may, based upon application from a State, permit a State to obtain and use income and eligibility information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the

alternate source or sources is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

(d) The State agency must, upon request, reimburse another agency for reasonable costs incurred in furnishing income and eligibility information as prescribed in this section, including new developmental costs associated with furnishing such information, in accordance with specific agreements as described in § 205.58.

7. Section 205.56 is revised to read as follows:

§ 205.56 Requirements governing the use of income and eligibility information.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will use the information obtained under § 205.55, in conjunction with other information, for:

(1) Determining individuals' eligibility for assistance under the State plan and determining the amount of assistance, as follows:

(i) The State agency shall review and compare the information obtained from each data exchange against information contained in the case record to determine whether it affects the applicant's or the recipient's eligibility or the amount of assistance.

(ii) The State agency shall verify that the information is accurate and applicable to case circumstances either through the applicant or recipient or through a third party, if such verification is determined appropriate based on agency experience or is required under paragraph (b) of this section.

(iii) For applicants, if the information is received during the application period, the State agency shall use such information, to the extent possible, in making the eligibility determination.

(iv) For individuals who are recipients when the information is received or for whom a decision could not be made prior to authorization of benefits, the State agency shall, within thirty (30) days of its receipt, initiate a notice of case action or an entry in the case record that no case action is necessary, except that: completion of action may be delayed beyond 30 days on no more than twenty (20) percent of the information items received, if:

(A) The reason that the action cannot be completed within 30 days is the

nonreceipt of requested third party verification; and

(B) Action is completed promptly, when third party verification is received or at the next time eligibility is redetermined, whichever is earlier. If action is completed when eligibility is redetermined and third party verification has not been received, the State agency shall make its decision based on information provided by the recipient and any other information in its possession.

(v) The State agency shall use appropriate procedures to monitor the timeliness requirements specified in this subparagraph;

(1) Investigations to determine whether recipients received assistance under the State plan to which they were not entitled; and

(3) Criminal or civil prosecutions based on receipt of assistance under the State plan to which recipients were not entitled.

(b) With respect to the information received under § 205.55 from the Internal Revenue Service concerning unearned income of an applicant or recipient:

(1) The agency shall not terminate, deny, suspend, or reduce benefits to the individual based on the information until it has taken the appropriate steps to independently verify the information, relating to:

(i) The amount of the resource or income involved;

(ii) Whether the applicant or recipient actually has (or had) access to the resource or income for his or her own use; and

(iii) The period or periods when the individual actually had the resource or income.

(2) The agency must verify the information by either:

(i) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income or the resource; or

(ii) Sending the applicant or recipient a letter informing the individual of the information received and asking him or her to respond within a specific period. The letter must clearly explain the information the agency has, its relevance to the individual's eligibility or benefit, and what action the agency will take in the event the individual fails to respond to the letter.

(c) If the agency intends to reduce, suspend, terminate or deny benefits as a result of the actions taken pursuant to this section, the agency must provide notice and the opportunity for a fair hearing in accordance with § 205.10(a).

8. Section 205.57 is revised to read as follows:

§ 205.57 Maintenance of a machine readable file; requests for income and eligibility information.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain a file which is machine readable, i.e., which is maintained in a fashion that permits automated processing, and which contains the first and last name and verified social security number of each person applying for or receiving assistance under the plan.

(b) The State agency will use this file to exchange data with other agencies pursuant to § 205.55.

9. Section 205.58 is revised to read as follows:

§ 205.58 Income and eligibility information; specific agreements required between the State agency and the agency supplying the information.

(a) A state plan under title I, IV, AV—A, X, XIV, or XVI, (AABD) of the Social Security Act must provide that, in carrying out the requirements of §§ 205.55 and 205.56, the State agency will enter into specific written agreements as described in paragraph (b) with those agencies providing income and eligibility information. The agreements will contain the procedures to be used in requesting and providing information.

(b) These agreements will include, but need not be limited to, the following:

(1) Purpose of the request;

(2) Identification of all agency officials, by position with authority to request information;

(3) Methods and timing of the requests for information, including the machine readable format to be used, the period of time needed to furnish the requested information and the basis for establishing this period. Agreements with the SWICA and the agency administering the Unemployment Compensation program in the State must provide that the State agency shall obtain information no less frequently than twice monthly;

(4) The type of information and reporting periods for which information will be provided;

(5) Safeguards limiting release or redisclosure as required by Federal or State law or regulation, including the requirements of § 205.50 and as may be required by guidelines issued by the Secretary; and

(6) Reimbursement, if any, for the costs of furnishing the information requested by the State agency, including new developmental costs associated with furnishing such information.

10. Section 205.60 is revised to read as follows:

§ 205.60 Reports and maintenance of records.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, the provision of financial assistance, and the use of any information obtained under section 205.55, with respect to individual applications denied, recipients whose benefits have been terminated, recipients whose benefits have been modified, and the dollar value of these denials, terminations and modifications. Under this requirement, the agency will keep individual records which contain pertinent facts about each applicant and recipient. The records will include information concerning the date of application and the date and basis of its disposition; facts essential to the determination of initial and continuing eligibility (including the individual's social security number, need for, and provision of financial assistance); and the basis for discontinuing assistance.

(b) The agency shall report as the Secretary prescribes for the purpose of determining compliance with the requirements of sections 205.55 and 205.56 and for evaluating the effectiveness of the Income and Eligibility Verification System.

11. A new section 205.62 is added as follows:

§ 205.62 Delay of effective date.

(a) If the agency submits, by May 29, 1986, a plan describing a good faith effort to come into compliance with the requirements of section 1137 of the Act and these implementing regulations, the Secretary may grant a delay in the effective date of any provision of §§ 205.55 through 205.60 and § 206.10 implementing section 1137(a) and (g) of the Act. This plan must include the following information for each provision: the provision, the proposed implementation date, a justification for the delay, and a plan for implementing the provision. The Secretary shall consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of any plan describing a good faith effort and may not grant a delay of the effective date of any provision beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of section

1137(c) of the Act, which is implemented by § 205.56. (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

12. The authority citation for Part 206 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

13. Section 206.10 is amended by removing paragraphs (a)(9)(iii)(A) and (B), by adding a new paragraph (a)(2)(iii), and by revising paragraph (a)(5)(ii) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(2) * * *

(iii) All applicants for and recipients of assistance shall be notified in writing at the time of application and on redetermination that eligibility and income information will be regularly requested from agencies specified in § 205.55 and will be used to aid in determining their eligibility for assistance.

* * *

(5) * * *

(ii) Assistance will not be denied, delayed, or discontinued pending receipt of income or other information requested under § 205.55, if other

evidence establishes the individual's eligibility for assistance.

* * *

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Part 232 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

14. The authority citation for Part 232 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

15. Section 232.10 is redesignated as new § 205.52. Newly designated § 205.52 is revised to read as follows:

§ 205.52 Furnishing of social security numbers.

The State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) The State or local agency will assist the applicant or recipient in making applications for SSNs and will

comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers.

(c) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(d) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(e) "Applicant" and "recipient" include for the purposes of this section the individuals seeking or receiving assistance and any other individual whose needs are considered in determining the amount of assistance.

(f) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 1137 of the Social Security Act and that the SSN will be utilized in the administration of the program.

(g) The State agency will submit all unverified social security numbers to the Social Security Administration (SSA) for verification. The State agency may accept as verified a social security number provided directly to the State agency by SSA or by another Federal or federally-assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

[FR Doc. 86-4260 Filed 2-27-86; 8:45 am]

BILLING CODE 3410-30-M; 4120-01-M; 4150-04-M; 4190-11-M; 4510-30-M