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Part II

Department of Labor

Employment and Training Administration

20 CFR Part 603

**Federal-State Unemployment
Compensation Program; Confidentiality
and Disclosure of State Records;
Proposed Rule**

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 603**

RIN: 1205-AA74

**Federal-State Unemployment
Compensation Program;
Confidentiality and Disclosure of State
Records****AGENCY:** Employment and Training
Administration, Labor.**ACTION:** Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to revise the regulations implementing the Income and Eligibility Verification System (IEVS). Under the IEVS the agency charged with the administration of the State unemployment compensation law must request and exchange certain information with other State and local agencies administering several Federally-assisted programs and furnish information to the Secretary of Health and Human Services regarding programs under titles II and XVI of the Social Security Act (SSA) for the purposes of verifying eligibility for, and the amount of, benefits under these programs. The proposed rule modifies and expands the IEVS regulations to include all of the requirements of statutory provisions relating to the confidentiality and disclosure of State records compiled or maintained for the purposes of the Federal-State unemployment compensation program. In summary, the proposed rule sets forth—

- The Secretary's interpretation of section 303(a)(1), SSA, with respect to the general rules on the confidentiality and disclosure of information,
- The disclosure requirements under: Subsections (a)(7), (c)(1), (d), (e), (f), (h), and (i) of section 303, SSA; section 3304(a)(16), Federal Unemployment Tax Act; and section 3(b), Wagner-Peyser Act,
- The disclosure permitted under section 303(g), SSA,
- Provision for payment of costs, safeguarding information, and execution of agreements with respect to the disclosure of information, and
- Conformity and compliance with the Federal law requirements.

DATES: Written comments on this proposal must be received in the Department of Labor by the close of business on May 22, 1992.

ADDRESSES: Comments on this proposed rule may be mailed or delivered to Mary

Ann Wyrsh, Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-4231, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Virginia Chupp, Unemployment Insurance Program Specialist, Unemployment Insurance Service, 202-535-0200 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration of the Department of Labor proposes to revise the Income and Eligibility Verification System (IEVS) regulations at 20 CFR part 603. The present rule implements section 303(f) of the Social Security Act (SSA), requiring that each State unemployment compensation agency (State agency) provide that information be requested and exchanged with State and local agencies administering several Federally-assisted programs and furnish information to the Secretary of Health and Human Services regarding programs under titles II and XVI, SSA, for the purposes of verifying eligibility for, and the amount of, benefits under these programs.

Besides the disclosures required under section 303(f), SSA, and present part 603, there are six other provisions in the SSA (subsections (a)(7), (c)(1), (d), (e), (h), and (i) of section 303), and one each in Federal Unemployment Tax Act (FUTA) (section 3304(a)(16)), and the Wagner-Peyser Act (section 3(b)) which require State agencies to disclose certain information to outside parties. The provisions vary with respect to the specific information to be disclosed and the terms and conditions under which disclosure is made. In addition, section 303(g), SSA, does not expressly require disclosure of information, but disclosure is implicit in the method of recovery of overpayments provided by this section.

The present provisions of part 603, relating to the IEVS system required by section 303(f) of the SSA, are placed in subpart C of the proposed rule in this document, with the general provisions applicable to all of new part 603 being revised and placed in subpart A. All other required disclosure provisions referred to above are placed in subparts D through L.

Also, in subpart B of the proposed rule are set forth the basic confidentiality and disclosure requirements for the Federal-State unemployment compensation program, which have their origin in the beginning of the program and are derived from section 303(a)(1) of the SSA. It is necessary to set forth these basic requirements in part 603

because they are not contained in any other published rule, and all of the required disclosure provisions (subparts C through L) are statutory exceptions to the basic rule of confidentiality.

Because an exception is permitted to the basic rule of confidentiality (relating in general to disclosure of information to public officials if authorized under the State law), and because all of the mandatory disclosure provisions stand as exceptions to the basic rule of confidentiality, there are set forth in subpart B uniform rules on (1) payment of costs of making disclosures which are not in the course of administration of the State unemployment compensation laws, (2) safeguards required for any such disclosed information, and (3) agreements between the State agency and agencies or entities requesting information which set forth the terms and conditions for making disclosures of information and the remedies that apply in the case of breach of an agreement.

On payment of costs the proposed rule is an expanded version of what is contained in present part 603, and reflects the position long held under section 303(a)(1) of the SSA. On safeguards and agreements the provisions of the proposed rule are somewhat revised versions of the provisions contained in present part 603. Finally, in subpart B is set out a specific provision on effectuating conformity and compliance with the requirements of section 303(a)(1), which simply sets forth the procedural steps required by section 303(b) of the SSA and existing regulations at 20 CFR 601.5.

Where payment of costs is required by other subparts of new part 603, reference is made to the cost principles as set forth in subpart B. Similarly, where it is appropriate in such other subparts, reference is made to the provisions of subpart B on safeguards, agreements, and effectuating compliance. Uniformity is thereby achieved in all subparts on these subjects, although there are some differences of content in the various subsections of section 303. For example, not all subsections explicitly require payment of costs or adoption of safeguards, and none specifically requires agreements. Uniformity in these common provisions is essential, however, for ease of administration of the various subparts; differing provisions would complicate administration and are unwarranted. Under section 303(a)(1) there is no basis for differing treatment of costs or agreements, and safeguards must also be uniform to provide the same protections to all disclosed information.

Therefore, ample support for such uniform treatment is found in section 303(a)(1), which is controlling on the details of the terms and conditions surrounding disclosures which are exceptions to the basic rule of confidentiality. Accordingly, uniformity is achieved on costs, safeguards, and agreements by addressing the basic requirements in subpart B, and by referring to those basic provisions in the other subparts.

The provisions on effectuating conformity and compliance also are made uniform throughout new part 603. As to conformity, the only statutes involved are sections 303(a)(1) and 303(a)(7) of the SSA and section 3304(a)(16) of the FUTA. The provisions on effectuating conformity in subparts B, D, and K simply track the relevant statutes and 20 CFR 601.5.

On compliance, however, there are some differences among the statutory provisions. Most of the statutory provisions require substantial compliance with the Federal requirements, but section 303(c)(1) does not employ the term, and there is no enforcement language for section 303(d)(2), section 303(f), or section 303(g), or for section 3(b) of the Wagner-Peyser Act insofar as it is made applicable to State unemployment compensation agencies. Section 303(c)(1) is interpreted as requiring substantial compliance, although the statutory language would support a stricter criterion, to achieve uniformity among all of the compliance requirements of section 303. The Department does not believe that the absence of explicit enforcement language in the other cited provisions of section 303 of the SSA indicates any Congressional intent that the provision was not to be enforced. Congress was aware that the Secretary has broad authority to implement and enforce the provisions of the SSA and the FUTA; presumably Congressional silence on a specific enforcement provision for a disclosure requirement was based on that awareness.

Because each of those cited provisions are requirements for State administration of the unemployment compensation program, based upon its past practice, the Department has concluded that the enforcement provisions of section 303(b) and 20 CFR 601.5 shall be applicable to each of them. The Department consistently has taken the position in the past that a statutory requirement for State laws or State agencies in the Federal-State unemployment compensation program is enforceable under title III of the SSA (or the FUTA), regardless of the absence of

express enforcement language (as in the case of sections 303(d)(2), 303(f), and 303(g)), or the placement of the statutory requirement somewhere other than in title III (or the FUTA) (as in the case of section 3(b) of the Wagner-Peyser Act). Making these requirements enforceable under title III of the SSA gives effect to the provisions in accordance with the intent evident in their enactment, brings them under the notice and opportunity for hearing provisions of section 303(b) of the SSA and 20 CFR 601.5, and also affords the States access to the judicial review provisions in section 304 of the SSA.

For the same reasons, the Department believes that the exclusion in section 304(a)(2) of subsections (f) and (g), which are not listed among the subsections with respect to which judicial review may be sought under section 304, is not an indication of Congressional intent that these provisions not be enforced. In new part 603 the Department makes section 304 applicable to all findings under title III and part 603, and, as noted below, also makes section 304 applicable to findings as to a State agency with respect to the requirements of section 3(b) of the Wagner-Peyser Act.

Section 3(b) of the Wagner-Peyser Act poses the same kind of problem. It imposes upon State unemployment compensation agencies, as well as State employment service agencies, the requirement of disclosing three specified items of information to a "public agency" administering a State plan under title IV.A of the SSA (AFDC) or any program or activity under title IV.D of the SSA (child support, etc.), or to a State agency administering the food stamp program. Insofar as section 3(b) applies to State employment service agencies, that matter is left to that Act and the employment service regulations and is not covered in new part 603. Insofar as section 3(b) applies to State unemployment compensation agencies, however, it is a matter that can be administered effectively and reasonably only by treating it as a requirement of title III of the SSA.

Accordingly, for the reasons stated above, in regard to sections 303 (f) and (g) of the SSA, enforcement of the requirements of section 3(b) of the Wagner-Peyser Act (insofar as such section imposes requirements upon State unemployment compensation agencies) is brought under section 303(b) of the SSA and 20 CFR 601.5, and the judicial review provisions of section 304 of the SSA. The Department will continue to enforce section 3(b) in the manner set forth in new part 603, as

explained herein, until corrective legislation is enacted into law prescribing a different method of enforcing the unemployment compensation requirements of section 3(b).

An explanation of each subpart of new part 603 follows.

Explanation by Subpart

Subpart A—In General

Section 603.1, *Purpose*, describes in general terms the purposes of new part 603. This differs materially from the present § 603.1, because the present part 603 addresses only the 1984 provisions of section 303(f) of the SSA, whereas new part 603 addresses all of the Federal disclosure requirements (including the 1988 amendments to section 1137 of the SSA which affected section 303(f)) as well as the basic rule of confidentiality.

Section 603.2, *Scope*, describes the scope of new part 603, with a brief note about each subpart. There is no "scope" section in the present part 603.

Section 603.3, *Definitions*, defines the terms which are applicable to all of the subparts of new part 603.

Paragraph (a) of § 603.3 defines "compensation" and "unemployment compensation" as such terms are defined for the purposes of the Federal-State unemployment compensation program in section 3306(h) of the FUTA. These terms are not defined in the present part 603.

Paragraph (b) of § 603.3 defines "Department" as meaning the United States Department of Labor and, within the Department, the Employment and Training Administration and the Bureau of Labor Statistics (BLS). This definition establishes the authority for administering new part 603, in accordance with the delegation of authority from the Secretary of Labor to the Assistant Secretary of Labor for Employment and Training (Secretary's Orders 4-75 and 14-75). BLS is included in the definition because BLS has been delegated authority for collecting information under section 303(a)(6) of the SSA, as well as under 29 U.S.C. 2 and Secretary's Order No. 39-72. This definition is not included in the present part 603.

Paragraph (c) of § 603.3 defines "records" so as to make clear that, for the purposes of the mandatory disclosure provisions, the term includes only the records of the State unemployment compensation agency; and that, for the purposes of section 303(a)(1), it also includes all other records of the executive branch of the

State Government. This definition is not included in the present part 603; it was not needed because section 303(f), like other mandatory disclosure provisions, is applicable solely to records of the State agency.

Paragraph (d) of § 603.3 defines "request" as a written request for disclosure of records, and is applicable to any request for disclosure of information that the State agency is not required to make in the course of administration of the State law. This definition is not included in the present part 603, and is included in new part 603 as being essential to provide an auditable record of requests received under the various mandatory disclosure provisions.

Paragraph (e) of § 603.3 defines "Secretary" as meaning the Secretary of Labor. This definition is not included in the present part 603, and is included in new part 603 to emphasize the distinction between the Department and the Secretary as to the authority in regard to administration and enforcement of new part 603. The distinction is that the Department is responsible for the day-to-day administration of the Federal requirements, including part 603, whereas the Secretary has reserved the authority to make judicially reviewable findings on conformity and compliance. This important distinction is not specifically addressed in the present part 603.

Paragraph (f) of § 603.3 defines "State" as meaning the "states" included in the Federal-State unemployment compensation program. This defines the scope of new part 603, making all of the "states" subject to the requirements therein. This definition is not specifically included in the present part 603, although it is inherent in the definition of "State unemployment compensation agency."

Paragraph (g) of § 603.3 defines "State agency" in essentially the same terms as it is defined in the present part 603. It patently means and includes only the State unemployment compensation agency; that is, the State agency which administers the approved State unemployment compensation law. It does not mean or include the State employment service agency, or any other State agency or any local governmental agency.

Paragraph (h) of § 603.3 defines "State law" as meaning an approved State unemployment compensation law. This definition is not specifically included in the present part 603, but is alluded to in the definition of "State unemployment compensation agency."

Paragraph (i) of § 603.3 defines "wage information" as including, in substance, the same information as is included in the definition of such term in the present part 603. Other provisions of the present definition are either included in subpart C or omitted as being outdated.

These comprise all of the definitions deemed essential and relevant to all of the subparts of new part 603. Other definitions, such as the definition of "claim information" and some other definitions specifically applicable to a particular subpart, are included in such subpart.

*Subpart B—Confidentiality
Requirement of Section 303(a)(1) of the
Social Security Act*

Subpart B is entirely new. In it is set forth the interpretation of the confidentiality requirement to which the Department and its predecessors have adhered since the beginning of the Federal-State unemployment compensation program. Subpart B treats the subject comprehensively, adding provisions on mandatory disclosure, permissible exceptions to the rule of confidentiality, and the specific situations in which the rule of confidentiality is not applicable.

Section 603.10, *Purpose and application*, expressly states that the purpose of subpart B is to set forth the requirements of section 303(a)(1) of the SSA, as such requirements concern the confidentiality of information in the records of the State and State agency relating to the administration of the approved State unemployment compensation law. It is also expressly stated that subpart B applies not only to the State unemployment compensation agency, but also to the entire executive branch of the State Government. It is important to emphasize this application rule, because in the other subparts of new part 603, dealing with mandatory disclosures to other State and Federal agencies, only the records of the State agency are required to be disclosed.

Section 603.11, *Interpretation and application*, contains the substantive heart of subpart B. In this section are set forth the basic rules of confidentiality and mandatory disclosure, the exceptions, and the situations in which the rule of confidentiality is not applicable. This section is intended to be comprehensive, and cover every conceivable situation.

Paragraph (a)(1) of § 603.11 merely quotes the conformity requirement of the "methods of administration" required by section 303(a)(1) of the SSA.

Paragraph (a)(2)(i) of § 603.11 sets forth, in clause (A), the basic rule of confidentiality as an interpretation of

the "methods of administration" requirement of section 303(a)(1). It requires to be kept confidential all information of whatever kind or form in the records of a State agency or in any other files of the executive branch of the State government. It prohibits the disclosure of any such information to any person, organization, or entity whatever, except for disclosure required or permitted by any other provision of § 603.11.

Underlying this interpretation is the fact that unemployment compensation is a public benefit, derived from employer taxes (or reimbursements), and paid from a special State fund as a matter of right to eligible unemployed individuals. The methods of administration adopted by a State must be reasonably calculated to insure the full payment of compensation when due under the State law. The Secretary of Labor has the statutory authority and responsibility to determine what methods of administration best accomplish this result. From the beginning of the Federal-State unemployment compensation program it has been determined that confidentiality of records is essential to the proper and efficient administration of the program, and no change is contemplated in the rule of confidentiality. Confidentiality avoids publicity about claimants and employers, and possible notoriety resulting from publicity. Publicity could have disrupting effects on the operations of the State agency, would be likely to discourage many individuals from claiming a statutory entitlement, and as likely act as a disincentive for employers to cooperate with the State agency in the administration of the State law. The confidentiality rule contributes to the proper and efficient administration of the program by allowing administrators to turn away requests that would otherwise consume time and resources in disclosing information, and otherwise tend to disrupt the operations of the State agency. It also conserves administration funds, which are granted to the States for the proper and efficient administration of the State law, since to permit disclosure other than in the course of administration of the State law would result in the dissipation of the funds for other purposes and thus be directly contrary to the purposes of section 302(a) of the SSA.

Confidentiality of records, therefore, has been determined to be an elementary factor necessary to the proper and efficient administration of the Federal-State unemployment compensation program, and it is this

conclusion that is reflected in the interpretation in clause (A) of § 603.11(a)(2)(i).

The interpretation in clause (A) of § 603.11(a)(2)(i) has another important application that is not readily apparent in the language of clause (A) or in the explanation and justification given above. In addition to the information required from individuals and employers and employing units for the purposes of administration of the revenue and benefit provisions of the State laws, much more information is required to be obtained from the same and other sources for the purposes of the many statistical and data reports required by the Department pursuant to section 303(a)(6) of the SSA. Section 303(a)(6) is a conformity requirement for approved State laws, so that any information obtained from any source for the purposes of such reports, and maintained in the records of the State or the State agency, is information pertaining to the administration of the State law. To ensure the cooperation of sources furnishing such information, to avoid uses of the information for purposes other than those for which it is obtained, and to preclude States from becoming information clearinghouses and using granted funds for other than program purposes, all such information shall be deemed by the Department to be subject to the rule of confidentiality in clause (A).

It should be noted that, what is said about information obtained for the purposes of statistical and data reports required pursuant to section 303(a)(6) of the SSA has no bearing upon information obtained solely for the purposes of cooperative agreements entered into with the Bureau of Labor Statistics under the authority of 29 U.S.C. 2 and Secretary's Order No. 39-72. As provided in clause (iii) of § 603.11(b)(5), neither the rule of confidentiality, nor any other provision of subpart B, applies to any such information. It necessarily follows, therefore, that funds granted for the administration of the State law may not be used to collect, compile, tabulate, or report any such information under 29 U.S.C. 2.

There are, however, limitations on the rule of confidentiality, all of which are set forth explicitly in the following provisions of § 603.11, beginning with clause (B) of paragraph (a)(2)(i) of § 603.11.

Paragraph (a)(2)(i) of § 603.11 also sets forth, in clause (B), the essential counterpoint to clause (A), as an interpretation of section 303(a)(1). Clause (B) requires the disclosure to claimants and employers of all

information that will reasonably afford them the opportunity to know, establish, and protect their rights and meet their responsibilities under the State law, and such disclosure as is required in accordance with any other provision of § 603.11.

Such openness towards claimants and employers is deemed as essential to the proper and efficient administration of the State law as is confidentiality towards others. Claimants and employers cannot fully or properly protect their rights, and meet their responsibilities, unless they are made fully aware of those rights and responsibilities. The State and the State agency must be made to bear the responsibility for assuring that claimants and employers are furnished all of the information they need for those purposes. Potential claimants are included to assure that not only active claimants are covered, but also any other person who might file a claim in the future. Employing units, i.e., non-covered employers, are included to assure that not only subject employers are covered, but also any other firm or person having or intending to have any person in its employ.

Mandatory disclosure of information to claimants and employers has been determined, therefore, to be another elementary factor necessary to the proper and efficient administration of the Federal-State unemployment compensation program, and it is this conclusion that is reflected in the interpretation in clause (B) of § 603.11(a)(2)(i).

Paragraph (a)(2)(ii) of § 603.11 states that the interpretations in clauses (A) and (B) of paragraph (a)(2)(i) are conformity and compliance requirements for the State laws and the States. It also states that the State laws must provide penalties for any disclosure of information which is inconsistent with any provision of § 603.11. It further provides that the requirements of paragraph (a)(2)(ii) will be deemed to be met if the State law and administration thereof fully accord with these requirements, including a penalty provision, and there is no other law of the State that is construed as requiring or authorizing a different or conflicting result.

Paragraph (a)(2)(ii) of § 603.11 simply expresses the law on the conformity and compliance requirements of section 303 of the SSA. There is nothing new or different in this statement of those requirements.

Subpart B of new part 603, therefore, fully sets forth positions of the Department on the confidentiality and disclosure requirements of section

303(a)(1) of the SSA. The basic interpretations in paragraph (a)(2)(i) of § 603.11 are precise statements of the Department's positions, although they have not heretofore been stated with such preciseness in any publication issued by the Department. Although the rule of confidentiality, as set forth in clause (A) of paragraph (a)(2)(i), is nothing new, it must be emphasized that the mandatory disclosure to claimants and employers, as set forth in clause (B) of paragraph (a)(2)(i), has not heretofore been expressed in such terms by the Department, and it must, therefore, be regarded as a new position for the purposes of this proposed rulemaking.

Paragraph (b) of § 603.11 covers all of the situations in which the rule of confidentiality set forth in paragraph (a)(2)(i)(A) is inapplicable, but with respect to which section 303(a)(1) is interpreted as requiring disclosure in the course of administering the State law. Paragraph (b) thus includes some of the required disclosure provisions referred to in the last clause of paragraph (a)(2)(i)(B).

Paragraph (b)(1) of § 603.11 requires the disclosure of information to or by officials and employees of the State and State agency as necessary for the proper administration of the State law, and restrictively defines the phrase "officials and employees of the State and State agency" to include only those persons having a need to know. Such disclosure is elementary to the proper and efficient administration of the State law, and therefore is deemed to be a "method of administration" required by section 303(a)(1) of the SSA. It is included in paragraph (b) because of the comprehensive scope of subpart B, and also to express the bounds of such required disclosure.

Paragraph (b)(2) of § 603.11 requires the disclosure of information by all officials and employees of the State and State agency to be made for the record in any judicial or quasi-judicial proceedings under the State law. Such disclosure is required to be made to the extent that it is necessary to a full development of the facts on the issues in the proceeding, and to such further extent as such disclosure will enable the presider to make an informed decision on all of the issues in the case. It is specifically provided that any information so disclosed and made a part of the record in the case shall not thereafter be subject to the rule of confidentiality in paragraph (a)(2)(i)(A) of § 603.11.

The disclosure of information required by paragraph (b)(2) is elementary to the proper and efficient administration of

the State law, and therefore is deemed to be a "method of administration" required by section 303(a)(1) of the SSA.

Paragraph (b)(3) of § 603.11 requires the disclosure of information to officials and employees of other State, local, and Federal agencies, as necessary for the proper administration of the State law. The phrase "other State, local, and Federal agencies" is expressly defined as including other agencies of the State Government or of another State (including the State agency of another State), local governmental agencies of the State, and any Federal agency.

Furthermore, it is expressly provided in paragraph (b)(3) that disclosures to Federal agencies shall include disclosure to the Immigration and Naturalization Service to the extent necessary for alien verification purposes, and may include disclosure of information or certifications requested or required by the Internal Revenue Service for any of the purposes of administration or enforcement of chapter 23 (FUTA) of the Internal Revenue Code of 1986.

Other disclosures covered by paragraph (b)(3) include disclosures as necessary under the Interstate Benefit Payment Plan, the Interstate Arrangement for Combining Employment and Wages (part 616 of this chapter), interstate offset and cross-program offset (subpart H of this part 603), and any other reciprocal arrangements which are consistent with section 303 of the SSA.

Disclosure in all such cases is elementary to the proper and efficient administration of the State law, and therefore is deemed to be a "method of administration" required by section 303(a)(1) of the SSA.

Paragraph (b)(4) of § 603.11 requires the disclosure of information to claimants and employers as necessary for the proper administration of the State law, and it is specifically stated that such disclosure is in addition to the disclosure required by paragraph (a)(2)(i)(B). The focus of these two provisions differs. The first focuses on the needs of claimants and employers; this paragraph (b)(4) focuses on the proper administration of the State law. They are identical, however, in including potential claimants and employing units. The last clause of paragraph (b)(4) bars the redisclosure by employers of information about claimants; the penalty provision required by paragraph (a)(2)(ii) would be applicable to any unauthorized redisclosure.

The provisions of paragraph (b)(4) are deemed by the Department to be necessary for the proper and efficient

administration of the State law, and the last clause is necessary for consistency with the rule of confidentiality in paragraph (a)(2)(i)(A). Each such provision is, therefore, deemed to be a "method of administration" required by section 303(a)(1) of the SSA.

Paragraph (b)(5) of § 603.11 expressly provides that the rule of confidentiality in paragraph (a)(2)(i)(A) shall have no applicability to the Department concerning any information requested or required under Federal statutes or regulations for any of the purposes of the Federal-State unemployment compensation program. This exception to the rule of confidentiality for the Department is sweeping, and is intended as a complete bar to the use of the rule of confidentiality to withhold any information from the Department. The bar of paragraph (b)(5) applies throughout the executive branches of the State Governments, including the State agencies.

The rule of paragraph (b)(5) is critical to the administration of the Federal statutes relating to the Federal-State unemployment compensation program, and is indispensable to the carrying out of the duties and responsibilities of the Secretary of Labor and the Department under those Federal statutes and implementing regulations and other directives. For this purpose also a special definition is added to paragraph (b)(5) to specify that the "Department" includes the Inspector General, the Comptroller General, and any contractor for the Department or the Inspector General.

Section 303(a)(1) is interpreted, therefore, as excepting the Department from the rule of confidentiality as set forth in paragraph (a)(2)(i)(A), and as affirmatively requiring disclosure of all information to the Department as provided in paragraph (b)(5).

Clause (iii) of paragraph (b)(5) provides that none of the provisions of subpart B is applicable to any information obtained solely for the purposes of cooperative agreements entered into with the Bureau of Labor Statistics under the authority of 29 U.S.C. 2 and Secretary's Order No. 39-72.

It should be noted that paragraph (b)(5) of § 603.11 pertains solely to information required by the Department for any of the purposes of the Federal-State unemployment compensation program. No provision of paragraph (b), or any other provision of part 603, purports to interpret the provisions of section 303(a)(6) as to the information that may be required by that section to be disclosed to the Department. The Department interprets section 303(a)(6)

broadly, however, and in addition to the information required for the purposes of the Federal-State unemployment compensation program, the Department also may require the disclosure of information for the purposes of any other program administered by the Department. For example, the Department may require the disclosure under section 303(a)(6) of information the Department deems necessary to evaluate programs under the Job Training Partnership Act, or to undertake research involving various labor issues within the scope of the Department's mission. Because section 303(a)(6) is the authority for requesting all such information, the disclosure of such information is a conformity and compliance requirement of section 303. In the light of this extended interpretation of the requirements of section 303(a)(6), comments are particularly invited on this subject.

Paragraph (c) of § 603.11 includes provisions on routine exceptions to the rule of confidentiality, and a note about the statutorily mandated exceptions to the rule of confidentiality that are covered in subparts C through L.

Paragraph (c)(1) covers the optional provisions for public officials and contractors of States and State agencies. Clause (i) of paragraph (c)(1) sets forth the Department's long-standing interpretation of section 303(a)(1) as not precluding the disclosure of any information in the records of a State or State agency to any public official (other than a public official referred to in paragraph (b)(1) or (b)(3)) for use in the performance of such public official's duties, and for a purpose which does not involve administration or enforcement of the State law, but only if—

(1) Disclosure of the specific information requested in any case is authorized by the State law, and

(2) The State or State agency determines in any case that such disclosure would not violate any other law of the State which is consistent with this section, or that such disclosure would not significantly hinder or delay the processing of claims for compensation or significantly hinder other activities of the State agency, or that such disclosure would not impede the efficient administration of the State law.

For the purposes of clause (i) of paragraph (c)(1), a "public official" includes only public officials in the executive branch of Federal, State, or local government, except that a State or State agency, at its option, may make disclosures in accordance with clause (i) to officials of a public agency or service

delivery area for the purposes of administration of the Job Training Partnership Act. In addition, the phrase "for use in the performance of such public official's duties" is specifically defined as meaning that disclosed information may be used solely for official business in connection with a law being administered or enforced by such public official. Therefore, the information which may be disclosed under clause (i) of paragraph (c)(1) to a public official for use in the performance of that public official's duties includes only information which is not required to be released under § 603.11(b) and which is not related to the administration or enforcement of the State law, even though the public official may be an official of the "State agency" which administers the unemployment compensation law or the employment service program.

Clause (i) of paragraph (c)(1) is an optional disclosure provision, and a State may, by law, adopt it to its fullest extent, or partially, or not at all. What a State may not do, however, is extend this optional disclosure beyond its scope as stated in clause (i), or dispense with any of the terms or conditions on such disclosures as set forth in clause (i) and in paragraph (d)(2).

Clause (ii) of paragraph (c)(1) deals with contractors of States and State agencies as a further exception to the rule of confidentiality. In accordance with clause (ii), information in the records of the State or State agency may be made available to a contractor of the State or State agency, provided that such disclosure is authorized by the State law, disclosure is made solely to the extent that it is necessary and proper to effectuate the contract, and the contract is fundable from title III granted funds.

Clause (ii) of paragraph (c)(1), like clause (i), is an optional provision, which is subject to the terms and conditions stated in clause (ii) and in paragraph (d)(2).

Paragraph (c)(2) of § 603.11 simply notes that the statutorily required exceptions to the rule of confidentiality, which are covered by subparts C through L of new part 603, are subject to the terms and conditions upon such disclosures as are set forth in the separate subparts. It is specifically noted in paragraph (c)(2) that the disclosure of any information to any public official, beyond that which is specifically required by subparts C through L, may be made solely in accordance with the optional provision of clause (i) of paragraph (c)(1), and under the terms and conditions applicable to such disclosures. What

this means is, that if a State agency, in negotiating an agreement in accordance with subpart C (for example), wishes to disclose more information than is specifically required under subpart C, the agreement for providing such additional information will be required to be entered into in accordance with the terms and conditions of paragraphs (c)(1)(i) and (d)(2). No exceptions are permissible to this rule, for any of subparts C through L.

Paragraph (d) of § 603.11 states the terms and conditions on disclosures of information made in accordance with paragraphs (b), (c), and (f) of such section, which are in addition to the terms and conditions contained in such paragraphs.

Paragraph (d)(1)(i) provides that any disclosure made in accordance with paragraph (b) shall be made without regard to §§ 603.12, 603.13, and 603.14. Such terms and conditions are not appropriate or allowable with respect to disclosures made in accordance with paragraph (b).

Paragraph (d)(1)(ii) provides that any disclosure made in accordance with paragraph (f) may similarly be made without regard to §§ 603.12, 603.13, and 603.14, except that, in the case of any disclosure made in accordance with paragraph (f) to anyone who is not a claimant or employer (referred to in paragraph (a)(2)(i)(B) or paragraph (b)(4)), or which is not made in the course of the administration of the State law, the State agency may require payment of its costs of making the disclosure. For disclosures of information in the public domain it would be inappropriate to require adherence to the requirements of §§ 603.12, 603.13, and 603.14.

Paragraph (d)(2) provides that optional disclosures made in accordance with clause (i) or (ii) of paragraph (c)(1) shall be made upon the terms and conditions as set forth therein and in §§ 603.12, 603.13, and 603.14, except that in the case of clause (ii) (State and State agency contractors) such disclosures may be made without requiring payment of costs as provided in § 603.12.

Paragraph (d)(3) provides that any mandatory disclosure referred to in paragraph (c)(2) shall be made solely upon the terms and conditions as set forth in the applicable subpart of new part 603.

Paragraph (e) of § 603.11 states the long-standing position of the Department on responses to subpoenas or other compulsory processes. Costs are payable from granted funds solely for actions taken which are consistent with this paragraph (e). Considerations of the use of granted funds also underlie

the reason why the State or State agency should seek payment of its costs if the court orders disclosure.

Paragraph (f) of § 603.11 provides that the rule of confidentiality shall not be deemed to be applicable to any information in the records of the State or State agency which is in the public domain. Four separate clauses of paragraph (f) spell out the information that shall be considered to be in the public domain. There is then set forth three specific bases a State or State agency may cite as a reason for declining to disclose information in the public domain. None of these three reasons may be the basis for declining to disclose information to claimants or employers referred to in paragraphs (a)(2)(i)(B) or (b)(4).

With respect to the general rules on confidentiality and disclosure of information, comments are invited on the effect, if any, this proposed rule would have on academic research.

Section 603.12, *Payment of costs*, sets forth the rules on recovery of the State's and State agency's costs of making disclosures of information which are not made in the course of the administration of the State law. The statutory principle underlying these rules is that funds granted under title III of the SSA for the administration of the State unemployment compensation law may not be used for any other purpose whatever. This is required by the explicit statutory terms of section 302(a) of the SSA, and pursuant to section 303(a)(6) of the SSA this is a conformity requirement for approved State laws and is a compliance requirement for the States and State agencies under section 303(b) of the SSA.

Paragraph (a)(1) of § 603.12 provides that granted funds may be used to pay all costs of disclosures referred to in paragraphs (a)(2)(i)(B) and (b) of § 603.11, and for any other disclosures referred to in paragraph (c)(1)(ii) or (f) for which the costs are not charged to the recipient of the information. All such costs may be considered costs of administration of the State's law.

Paragraph (a)(2) of § 603.12 provides that granted funds may not be used to pay any of the costs of making optional disclosures referred to in paragraph (c)(1)(i) of § 603.11, except in isolated cases as set forth in paragraph (a)(2).

Paragraph (a)(3) of § 603.12 states the inclusive rule that granted funds may not be used to pay any of the costs of making any disclosure except as provided in paragraphs (a)(1) and (a)(2).

Paragraph (b) of § 603.12 provides that costs shall be calculated under the rules of 29 CFR part 97 and OMB Circular No.

A-87, and shall include any initial start-up costs. Postage or other delivery costs involved in making a disclosure shall be included as costs chargeable to the recipient. Further, penalty mail may not be used in any circumstances to transmit information being disclosed, except information referred to in paragraph (b), (c)(1)(ii), or (f) of § 603.11. Information that may not be sent by penalty mail may not be included in any mailing that may be sent by penalty mail.

With respect to the burden associated with information collection or recordkeeping required by this proposed rule, comments on any expected increase in such burden are invited from the State agencies.

Paragraph (c) of § 603.12 states the rule on payment and collection of the costs of making disclosures.

Section 603.13, *Safeguards for disclosed information*, sets forth the rules required to be imposed on recipients of disclosed information, to use the information solely for authorized purposes and to preclude the unauthorized redisclosure of the information.

Paragraph (a) of § 603.13 sets forth the general rules, which require the State or State agency to require of the recipient of disclosed information, that the recipient safeguard the information against unauthorized access or redisclosure as provided in paragraphs (b) and (c), and that the recipient be subject to penalties provided by the State law for unauthorized disclosure. The same general rules apply to a contractor for the State or State agency, and to any information obtained by the contractor from any other source in the execution of the contract.

The general rules stated in paragraph (a) reflect the Department's positions on these matters, and are a more complete statement of those rules than is contained in the present § 603.7(a). It is important to emphasize that significance is infused in the safeguards by requiring that recipients and their officials and employees must be subject to penalties provided by the State law for any unauthorized disclosure of information.

Paragraph (b)(1) of § 603.13 provides that the recipient shall be permitted to use disclosed information only for valid purposes involved in discharging the recipient's lawful responsibilities, and this also means only for the program purposes for which the information was disclosed. The recipient must also be prohibited from redisclosing the information except as provided in paragraph (c). This is a clarified version of present § 603.7(a)(1).

Paragraph (b)(2) of § 603.13 provides that the recipient shall be prohibited from using the information for any purpose not specifically authorized by an agreement which meets the requirements of § 603.14. This is the same as present § 603.7(a)(2).

Paragraph (b)(3) of § 603.13 provides that the recipient shall be required to store the disclosed information in a place physically secure from access by unauthorized persons. This is the same as present § 603.7(a)(3).

Paragraph (b)(4) of § 603.13 provides that information in electronic format shall be required to be stored securely. This is essentially the same as present § 603.7(a)(4).

Paragraph (b)(5) of § 603.13 provides that precautions shall be required to be taken to insure access only by authorized persons. This is essentially the same as present § 603.7(a)(5).

Paragraph (b)(6) of § 603.13 provides that the head of each recipient agency shall be required to give specified instructions to all personnel having access, and shall be required to sign an acknowledgment in the form specified in clause (ii) of paragraph (b)(6). This is essentially the same as present § 603.7(a)(6), but the terms of the acknowledgment are set forth with more specificity.

Paragraph (b)(7) of § 603.13 is not contained in the present § 603.7(a). It provides that the recipient shall be required to dispose of all disclosed information, and any copies thereof, after the purpose for which the information is disclosed has been served. An exception is made for any information filed in the record of any court case. Disposition instructions may include return of the information to the State or State agency, or destruction of the information, as directed by the State or State agency. Disposition includes deletion of personal identifiers by the State or State agency in lieu of destruction. It is further provided that any such information (or copies) shall not be archived or sent to any records center, and shall not be retained with personal identifiers for longer than ten years.

Paragraph (b)(7) is intended to counter a problem the Department has become aware of, involving the continual reuse of information long after the original purpose has ended, sometimes involving information that would not have been disclosable had subpart B been in effect at the time the information was obtained, or which was not disclosable under the Department's position at the time. This being the appropriate occasion to address the problem, and with disclosure today involving many

more public officials, it has become evident that better controls must be instituted to avoid abuses in the use of disclosed information.

In paragraph (b)(7), therefore, two major controls are required. The first is to require disposal of the information after it has served its purpose. This control is made more effective by requiring disposition to be at the direction of the State or State agency that disclosed the information in the first instance. The second major control is to prohibit permanent records storage, and set an outside time limit on retaining the information. A ten-year time limit is deemed by the Department to be more than ample for this purpose.

The controls required by paragraph (b)(7) are essential to any meaningful management of an information system. These new controls, therefore, are deemed by the Department to be critical to effective safeguards of any disclosed information.

To effectuate the controls of paragraph (b)(7), as well as for the other purposes of subpart B, it will be necessary for the States and State agencies to document all disclosures of information (other than those referred to in paragraph (a) or (b) of § 603.11) and initiate a tracking system for all disclosures. The records will be required to be sufficient for purposes of auditing compliance with the requirements of subpart B.

It should be noted that the ten-year retention period is the longest retention period authorized by paragraph (b)(7), and each State will have the authority to prescribe a shorter period with respect to any specific information disclosed. It should be recognized that any retention period of three or more years with no maximum number of years would permit a recipient to establish and maintain a longitudinal data base for such period, and likely would engender requests that result in establishing continuous data bases that would be maintained indefinitely. States will be obligated to monitor the contract or agreement under which the data is disclosed throughout the entire retention period because of the enforcement requirements of § 603.14(c)(2). For these reasons, comments are particularly invited on the ten-year retention period.

Paragraph (c) of § 603.13 specifies the only four situations in which a recipient may redisclose information. This is essentially the same as present § 603.7(b), but with the addition of redisclosure in response to a subpoena as provided in § 603.11(e).

The provision for on-site inspections in paragraph (c) of present § 603.7 is not

included in § 603.13, but is included in § 603.14.

Section 603.14, *Agreements and contracts*, sets out the terms and conditions for agreements with requesting agencies, and contracts with contractors, covering all information subject to the rule of confidentiality. Contracts with contractors also will be required to cover any information obtained by the contractors from any other source in the execution of the contracts.

Paragraph (a) of § 603.14 expresses the requirement for agreements and contracts as stated above.

Paragraph (b) of § 603.14 specifies the terms and conditions that must be included in all agreements and contracts, and also provides that the terms and conditions of any agreement or contract need not be limited to those specifically required. The provisions of paragraph (b) are essentially the same, with modifications for clarity and application to contracts, as are contained in the present § 603.6. The only significant difference is that the on-site inspection requirement of present § 603.7(c) is made a requirement for agreements and contracts by the addition of essentially the same provision in clause (7) of paragraph (b).

Paragraph (c) of § 603.14, on breach of an agreement and enforcement, is not contained in the present part 603, and is added as being essential to furnish guidance to the States and State agencies of the remedies they must have available to them under the State laws to assure conformity and compliance with the requirements of section 303(a)(1) of the SSA and subpart B.

Paragraph (c)(1) prescribes the steps that shall be taken in case of any breach of an agreement or contract, including failure to timely pay for the costs of any disclosure. First, the agreement or contract must be suspended, and any further disclosure is prohibited, until the State or State agency is satisfied that corrective action has been taken and that there will be no further breach of the agreement or contract. Second, in the absence of prompt and satisfactory corrective action the agreement or contract shall be cancelled, and the party shall be required to surrender all information obtained under the agreement or contract and any other information relevant to the agreement or contract.

It is important to the integrity of the rule of confidentiality that any breach of an agreement or contract, whatever its importance may seem in the abstract, be promptly addressed and corrected, and, in the absence of prompt and satisfactory correction, that the

agreement or contract be cancelled and the State or State agency retrieve and secure all information.

Paragraph (c)(2) requires that the State law provide effective enforcement tools for the State and State agency, and that effective enforcement tools be utilized. Thus, in addition to the actions required to be taken in accordance with paragraph (c)(1), the State or State agency is required to undertake any other action under the agreement or contract, or under any law of the State or of the United States, to enforce the agreement or contract and secure satisfactory corrective action or surrender of information. Other remedial actions required to be undertaken include seeking damages, penalties, and restitution for any changes to granted funds, and recompense for all costs incurred by the State or State agency in pursuing the breach of the agreement or contract and enforcement as required by paragraph (c).

It must be kept in mind that, under sections 302(a) and 303(a)(8) of the SSA, granted funds may not be used in any manner or for any purpose in the administration or enforcement of such agreements and contracts. It follows that granted funds may not be used in pursuing breaches or enforcement of such agreements and contracts. Any costs incurred in regard to such matters must be fully recovered, and this underlines the importance of diligence in seeking recovery of such costs in connection with any and all breaches.

Section 603.15, *Notification of claimants and employers*, expresses one of the elementary requirements of developing law, that any information in the records of the State or State agency concerning any claimant or employer may be disclosed to others, and they are entitled to be notified of that possibility. This section is a restatement of the same requirement contained in present § 603.4, and is made applicable to employers as well as claimants. More detailed notification may be required by State privacy law, and, if so that will not be deemed to be inconsistent with this section.

Section 603.4 of the present part 603 implements the notification requirement applicable to the income and eligibility verification system (IEVS) in section 1137(a)(6) of the SSA. In § 603.15 the notification requirement of section 1137(a)(6) is restated as a general requirement of section 303(a)(1) of the SSA, and applicable to all disclosures that may be made in accordance with new part 603. Further, it is extended to cover employers, also as a requirement of section 303(a)(1).

The Department believes that the notification required by § 603.15 is a reasonable interpretation of the "methods of administration" requirement of section 303(a)(1), and that the thrust of section 1137(a)(6) is correct and justifiably extended to all of new part 603. The basis for this position is that claimants and employers are entitled to know everything the government does or may do that affects them, not only what their rights and responsibilities are under the State law, but also what use may be made of State records that may affect them directly or indirectly. Accordingly, for the purposes of section 303(a)(1), claimants and employers are entitled to be informed of what uses the government makes of information in State records, as well as information needed to protect their rights and carry out their responsibilities under the State law. On the other hand, because section 1137(a)(6) applies only to the IEVS implemented in subpart C, there would be justification in limiting the notification requirement to subpart C, either as set forth in present § 603.4 or as restated and extended to employers in § 603.15, and otherwise leave the matter of required notification of claimants and employers to the law of each State. Therefore, comments are particularly invited on this subject as follows.

In view of the fact that § 603.15 is a significant extension of present § 603.4, and has not heretofore been expressed by the Department as a requirement of section 303(a)(1), comments are invited on making such notification a general requirement of section 303(a)(1).

Notice, also, that this extended notification requirement is made applicable in subpart C to the IEVS, but no specific reference to § 603.15 is made in subparts D through L. Comments are invited on this extension of the notification requirement for subpart C, and as to whether § 603.15 should be referred to expressly in subparts D through L.

Section 603.16, *Effectuating conformity and compliance*, is not contained in the present part 603, and need not have been because section 303(f) (the requirement implemented in present part 603) is not a conformity requirement. Section 303(a)(1) is, however, both a conformity and a compliance requirement, and § 603.16 thus sets forth the statutory procedures for effectuating both conformity and compliance. There is nothing new or different in this section, however; set forth simply therein, for the edification of the States and State agencies, are the conformity and compliance procedures

prescribed by section 303(b) of the SSA and 20 CFR 601.5. Added in paragraph (c) is a provision on formal and informal resolution of issues, by reference to specific provisions of 20 CFR 601.5.

Subpart C—Income and Eligibility Verification System

Subpart C implements section 303(f) of the SSA, as amended in 1988.

Subpart C includes portions of the present subpart A, IEVS regulations first published in the *Federal Register* on February 28, 1986, at 51 FR 7199.

Specifically, section 2651(d) of Public Law 98-396 added new section 303(f) to the SSA. This section requires States to have in effect an income and eligibility verification system, pursuant to which information is requested and exchanged for the purpose of verifying eligibility for, and the amount of, benefits available under several Federally-assisted programs including the Federal-State unemployment compensation program. Under the 1988 amendments to section 1137, SSA, subpart C also makes reference to the new provisions on verification of immigration status.

Subpart C replaces only those parts of unemployment insurance program letters (UIPLs) 1-85, and Change 1, 24-86, and 12-87 related to the disclosure of information under section 303(f), SSA.

Present § 603.1, *Purpose*, has been redesignated § 603.20 and retitled, *Purpose and application*, and revised to more accurately reflect the purpose of disclosure under IEVS. It also references the requirements under section 1137, SSA, that States have wage record systems and that claimants furnish statements regarding their social security account numbers and (under the 1988 amendments to section 1137, SSA) nationality or immigration status. In the paragraph on "Application" it is made clear that only State agencies, not States, are required to disclose information referred to in subpart C.

Present § 603.2, *Definitions*, is redesignated § 603.21. Definitions for State unemployment compensation agency and wage information have been moved to § 603.3 and modified for clarity and simplification.

Paragraph (a) of § 603.21 defines "claim information" in essentially the same terms as it is defined in the present part 603. This definition is based on section 1137(a)(4)(A) of the SSA which provides that agencies will exchange other information (besides wage information) in their possession for use in establishing or verifying eligibility or benefit amounts under the Federally-assisted programs.

Paragraph (b) of § 603.21 defines "requesting agency" in essentially the

same terms as it is defined in the present part 603. Where applicable, cross references among the various subparts are added.

Present § 603.3, *Eligibility condition for claimants*, has been eliminated because it does not deal directly with the disclosure of confidential information. Reference to the requirement that claimants furnish statements regarding their social security account numbers and nationality or immigration status is included in § 603.20.

Present § 603.4, *Notification to claimants*, has been redesignated § 603.22 and retitled, *Notification to claimants and employers*, and makes applicable by reference the requirements of § 603.15. That section has been revised for clarity and to provide notification to employers of the potential use of information provided by them.

Present § 603.5, *Disclosure of information*, has been redesignated § 603.23 and modified for clarity and simplification.

Present § 603.6, *Agreement between State unemployment compensation agency and requesting agency*, has been redesignated § 603.27 and retitled, *Agreements*. This section has been changed to make applicable by reference the requirements of § 603.14 (b) and (c), which is a somewhat revised version of the language of present § 603.6. Paragraph (c) of present § 603.6, related to Federal, State, or local agencies in another State requesting information, is retained in § 603.27.

Present § 603.7, *Protection of confidentiality*, has been redesignated § 603.26 and retitled, *Safeguards for disclosed information*. This section has been changed to make applicable by reference the requirements of § 603.13 which is a somewhat revised version of the language of present § 603.7, except for moving the paragraph related to on-site inspections (§ 603.7(c)) to § 603.14(b)(7) on agreements in order to make the requirement enforceable by agreement.

Present § 603.8, *Obtaining information from other agencies and crossmatching with wage information*, has been redesignated § 603.24 and modified for clarity.

Present § 603.9, *Effective date of rule*, has been eliminated because the date (May 29, 1986) by which the States must have developed a plan describing a good faith effort to comply with the requirements of section 1137 (a) and (b), SSA, has passed, making the section outdated.

Section 603.25, *Payment of costs*, is added to explicitly require payment of

costs to State agencies by Federal, State, and local agencies receiving information. In the present part 603, payment of costs is implied in § 603.6(b)(5) which requires provision for reimbursement in the agreements between the State agency and the agencies requesting disclosure. The statute provides for payment of costs under section 1137(a)(7), SSA. This section makes applicable by reference the requirements of paragraphs (b) and (c) of § 603.12.

Section 603.28, *Effectuating compliance*, makes applicable by reference the requirements of paragraphs (b) and (c) of § 603.16 and is added to this subpart, under the controlling interpretation of section 303(a)(1), SSA, to assure that State agencies comply substantially with the requirements of disclosure under subpart C.

Subpart D—Disclosure of Information to Agencies Charged With the Administration of Public Works or Assistance Through Public Employment

Subpart D implements section 303(a)(7), SSA.

Section 603.30, *Purpose and application*, sets forth the requirement under section 303(a)(7), SSA, that a State law provide that certain information be made available to any agency of the United States charged with the administration of public works or assistance through public employment. Subpart D applies only to State agencies.

Section 603.31, *Disclosure of information*, incorporates the statutory language and provides that disclosure be made upon request and only include, with respect to recipients for unemployment compensation, name, address, ordinary occupation, employment status, and a statement of such recipient's rights to further compensation under the State law.

Sections 603.32, 603.33, 603.34, and 603.35 address payment of costs, safeguards for disclosed information, agreements, and effectuating conformity and compliance, respectively, and make applicable by reference the requirements of the relevant sections of subpart B of part 603. Section 303(a)(7), SSA, requires conformity and substantial compliance with Federal requirements, but does not explicitly require payment of costs, adoption of safeguards, or execution of an agreement. All conditions are imposed under the controlling interpretation of section 303(a)(1), SSA.

Subpart E—Disclosure of Information to the Railroad Retirement Board

Subpart E implements section 303(c)(1), SSA.

Section 603.40, *Purpose and application*, sets forth the requirement under section 303(c)(1), SSA, that a State agency provide certain information to the Railroad Retirement Board. Subpart E applies only to State agencies.

Section 603.41, *Disclosure of information*, follows the statutory language and provides that disclosure be made upon request and include information as the Board deems necessary for its purposes.

Sections 603.42, 603.43, 603.44, and 603.45 address payment of costs, safeguards for disclosed information, agreements, and effectuating compliance, respectively, and make applicable by reference the requirements of the relevant sections of subpart B of part 603. Section 303(c)(1), SSA, explicitly requires payment of costs, but does not require adoption of safeguards and execution of an agreement. All conditions are imposed under the controlling interpretation of section 303(a)(1), SSA. Although the statutory language would support a stricter criterion, section 303(c)(1), SSA, is interpreted as requiring substantial compliance to achieve uniformity among all the compliance requirements of section 303, SSA.

Subpart F—Disclosure of Information to the Department of Agriculture and State Food Stamp Agencies

Subpart F implements sections 303(d)(1) and 303(d)(2)(B), SSA.

Subpart F replaces only those parts of UIPL 52–80, and Change 1, related to the disclosure of information under the above sections of the SSA.

Section 603.50, *Purpose and application*, follows the statutory language and sets forth the requirement under section 303(d)(1), SSA, that a State agency disclose certain information to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*).

Section 603.50 also implements section 303(d)(2)(B), SSA, which permits a State agency to notify the State food stamp agency of any individual who discloses on a new unemployment compensation claim that he or she owes an uncollected overissuance of food stamp coupons, and to forward any

withheld compensation to the State food stamp agency.

Further, § 603.50 notes that regulations in this subpart do not implement clauses (i), (iii), and (iv) of section 303(d)(2)(B), SSA, which relate, respectively, to the disclosure by an individual to the State agency of an uncollected overissuance, to the deduction and withholding from unemployment compensation of such overissuance, and to the payment of the amount deducted and withheld to the appropriate State food stamp agency, except as the latter involves disclosure of information. The requirements of these clauses are excluded because they are incidental to the disclosures of information required in accordance with this subpart.

Also, § 603.50 notes that disclosure of information required by subpart F is in addition to the disclosure requirements of subparts C, implementing the IEVS, and L. Subpart F applies only to State agencies.

Section 603.51, *Definition*, incorporates statutory language by defining "State food stamp agency" as meaning any State or local agency described in 7 U.S.C. 2012(n)(1) which administers the food stamp program established under the Food Stamp Act of 1977.

Section 603.52, *Disclosure of information*, provides that the disclosure of information be made upon request and include certain information related to wages (in substance, present part 603 definition) and claims (as specified in the statute). Further, § 603.52 provides that disclosure be made of any information required in connection with the transmittal of withheld compensation to the appropriate State food stamp agency.

Section 603.52 also provides that a State agency may notify the State food stamp agency (to which an uncollected overissuance is owed) that any individual who discloses such a debt has been determined to be eligible for unemployment compensation (if such determination has been made by the State agency).

Sections 603.53, 603.54, 603.55, and 603.56 address payment of costs, safeguards for disclosed information, agreements, and effectuating compliance, respectively, and make applicable by reference the requirements of the relevant sections of subpart B of part 603. Section 303(d)(1), SSA, explicitly requires payment of costs, and adoption of safeguards, but does not require execution of an agreement. Section 303(d)(2), SSA, also requires payment of costs. All conditions are imposed on disclosures required by section 303(d)(1) and (2)

under the controlling interpretation of section 303(a)(1), SSA. Section 303(d)(3), SSA, requires substantial compliance with respect to section 303(d)(1), SSA, but does not contain enforcement language for section 303(d)(2). In the proposed rule section 303(d)(2), as well, is interpreted as requiring substantial compliance.

Subpart G—Disclosure of Information to State or Local Child Support Enforcement Agencies

Subpart G implements sections 303(e)(1) and 303(e)(2)(A), SSA.

Subpart G replaces only those parts of UIPL 52–80, and Change 1, related to the disclosure of information under the above sections of the SSA.

Section 603.60, *Purpose and application*, sets forth the requirement under section 303(e)(1), SSA, that a State agency disclose certain information contained in the State agency's records directly to officers or employees of any State or local child support enforcement agency for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

Section 603.60 also implements section 303(e)(2)(A), SSA, which requires that a State agency notify the State or local child support enforcement agency of any individual who discloses on a new unemployment compensation claim that he or she owes child support obligations, that the individual has been determined to be eligible for unemployment compensation if such determination has been made by the State agency, and requires forwarding any withheld compensation to the child enforcement agency.

Further, § 603.60 notes that the regulations in this subpart do not implement clauses (i), (iii), and (iv) of section 303(e)(2)(A), SSA, which relate, respectively, to the requirement that an individual disclose that he or she owes child support obligations, to the deduction and withholding from unemployment compensation of such obligations, and to the payment of the amount deducted and withheld to the appropriate State or local child support enforcement agency, except as the latter involves disclosure of information. The requirements of these clauses are excluded because they are incidental to the disclosures of information required in accordance with this subpart.

Also, § 603.60 indicates that disclosure of information required by subpart G is in addition to the disclosure requirements of subparts C, implementing the IEVS, I, and L. Subpart G applies only to State agencies.

Paragraph (a) of § 603.61, *Definitions*, incorporates statutory language by defining "child support obligations" as only including obligations which are being enforced pursuant to a plan described in section 454, SSA, which has been approved by the Secretary of Health and Human Services under part D of title IV, SSA.

Likewise, paragraph (b) of § 603.61 defines "State or local child support enforcement agency" as meaning any agency of a State or political subdivision thereof operating pursuant to a plan described in section 454, SSA, which has been approved by the Secretary of Health and Human Services under part D of title IV, SSA. Accordingly, disclosure of information under this subpart is restricted for use in administration of child support enforcement only. Subpart L provides for much broader disclosure of information to IV-D agencies, but does not include wage information.

Section 603.62, *Disclosure of information*, provides that disclosure be made upon request and include certain information related to wages (in substance, present part 603 definition). Further, § 603.62 provides that disclosure be made of any information required in connection with the transmittal of withheld compensation to the appropriate State or local child support enforcement agency.

Section 603.62 also provides, as required by statute, that a State agency notify the State or local child support enforcement agency, with respect to any individual who discloses on a new unemployment compensation claim that he or she owes child support obligations, that the individual has been determined to be eligible for unemployment compensation if such determination has been made by the State agency.

Sections 603.63, 603.64, 603.65, 603.66 address payment of costs, safeguards for disclosed information, agreements, and effectuating compliance, respectively, and make applicable by reference the requirements of the relevant sections of subpart B of part 603. Section 303(e)(1), SSA, explicitly requires payment of costs, and adoption of safeguards, but does not require execution of an agreement. Section 303(d)(2) also requires payment of costs. All conditions are imposed on disclosures required by section 303(e)(1) and (2) under the controlling interpretation of section 303(a)(1), SSA. Section 303(e)(3), SSA, requires substantial compliance with Federal requirements.

Subpart H—Disclosure of Information Related to Recovery of Overpayments

Subpart H implements the disclosure of information which is required under the interstate offset and cross-program offset agreements which are authorized by section 303(g), SSA. Subpart H does not implement the requirements for such offsets beyond those relating to disclosure of information.

Section 603.70, *Purpose and application*, explains that disclosure of information is required in carrying out the interstate offset and cross-program offset agreements which are authorized by section 303(g), SSA. Under this section, States are permitted to withhold unemployment compensation payable under State laws to recover overpayments of benefits made to individuals by other States. Also, an overpayment of State unemployment compensation may be recovered from a payment made under a Federal unemployment benefit or allowance program if the State has entered into an agreement with the Secretary of Labor under section 303(g)(2), SSA, pursuant to which it may recover overpayments of State benefits from payments made under a Federal unemployment benefit or allowance program if it reciprocally recovers overpayments made under a Federal unemployment benefit or allowance program from State payments. Specifically, this section permits interstate same program offsets (i.e., State from State and Federal from Federal) and intrastate and interstate cross program offsets (i.e., State from Federal and Federal from State). Such interstate and cross-program recovery of overpayments necessarily requires the disclosure of information contained in State agency records. Subpart H applies only to State agencies.

Also, § 603.70 defines "Federal unemployment benefit or allowance program" as meaning any program established by Federal statute and administered by the Department, which provides for the payment from Federal funds of compensation to individuals. Under this definition, the only programs currently existing are those providing for the payment of unemployment compensation to Federal employees, unemployment compensation to ex-servicemembers, trade readjustment allowances under the trade adjustment assistance program, disaster unemployment assistance, and weekly layoff benefits under the redwood employee protection program.

Section 603.71, *Disclosure of information*, provides that the State agency may disclose to State agencies in other States only that unemployment

compensation information which is necessary to effectuate recovery of overpayments from individuals as authorized by State law in accordance with section 303(g), SSA. Further, to effectuate the purposes of interstate same program and cross-program offset the State agency shall disclose such information from its records as is necessary to accomplish these purposes. Similarly, a State agency effecting an offset may disclose to the other State agency only such information as is necessary for the purposes of the interstate agreement. This section does not specifically indicate the information which may be disclosed because State laws vary considerably and different information may be required by the States in order to effectuate an offset; however, it does limit the information to only that required for an offset.

Section 603.72, *Payment of costs*, provides that payment of costs by the receiving State agency is neither appropriate nor required with respect to disclosures of information under this subpart because granted funds paid to a State under section 302(a), SSA, may be used to pay all costs of disclosure under this Subpart.

Section 603.73, *Safeguards for disclosed information*, provides that the State agency receiving information disclosed under this subpart may use it only for purposes of recovering the overpayment for which the information was disclosed. This section makes applicable by reference the confidentiality requirements of § 603.13 of part 603.

Section 603.74, *Agreements*, explains that section 303(g)(2), SSA, requires an agreement between each State and the Secretary of Labor to authorize cross-program offsets (either intrastate or interstate). A properly executed agreement must be in effect before any cross-program offset may occur or information may be disclosed. No agreement with the Secretary is required for interstate, same program offsets. For interstate, same program offsets, reciprocal arrangements between and among the States are appropriate. Accordingly, an agreement such as that required under § 603.14 of part 603 is neither appropriate nor required under subpart H.

Section 603.75, *Effectuating compliance*, provides that where the Department has reason to believe that a State or State agency (the disclosing agency or the receiving agency) has failed to comply substantially with any of the requirements of subpart H, the requirements of paragraphs (b) and (c) of § 603.16 are applicable. Section

303(g), SSA, does not contain enforcement language, but substantial compliance is imposed under the controlling interpretation of section 303(a)(1), SSA.

Subpart I—Actions Required by State Agencies to Enable the Secretary of Health and Human Services to Obtain Prompt Access to Information

Subpart I implements section 303(h), SSA.

Subpart I replaces only those parts of UIPL 11-89 related to disclosure of information under section 303(h), SSA.

Section 603.80, *Purpose and application*, sets forth the requirement under section 303(h), SSA, that a State agency take action necessary to enable the Secretary of Health and Human Services (HHS), in accordance with the "Memorandum of Understanding" (appendix A to part 603) between the Secretaries of Labor and HHS, to obtain prompt access to certain information contained in the State agency's records for purposes of carrying out the child support enforcement program under title IV, section 453, SSA. As specified in that section, the Office of Child Support Enforcement (OCSE), Federal Parent Locator Service (FPLS), performs this function on behalf of the Secretary of HHS.

Also, § 603.80 notes that disclosure of information required by subpart I is in addition to the disclosure requirements of subparts C, implementing IEVS, G and L. Subpart I applies only to State agencies.

Section 603.81, *Disclosure of information*, provides that disclosure be made upon request and include certain wage information, claim information (both, in substance, present part 603 definitions), and other information (not specified in the statute other than to qualify it as useful in locating absent parents or parents' employers) contained in the records of such State agency.

Sections 603.82, 603.83, and 603.85 address payment of costs, safeguards for disclosed information, and effectuating compliance, respectively, and make applicable by reference the requirements of the relevant sections of subpart B of part 603. Section 303(h), SSA, explicitly requires substantial compliance, but does not require payment of costs and adoption of safeguards. All conditions are imposed under the controlling interpretation of section 303(a)(1), SSA.

Section 603.84, *Agreements*, explains that as specified in the "Memorandum of Understanding" between the Secretaries of Labor and Health and Human Services (appendix A to part

603), the Secretaries have agreed that the OCSE will enter into a written agreement with a State agency to act as OCSE's agent in establishing an arrangement with a contractor coordinating the information exchange for the purpose of facilitating the transmission of requests and responses to requests for information as provided in § 603.81. With respect to agreements for purposes of this subpart, § 603.84 makes applicable by reference the requirements of § 603.14, which also addresses breaches of agreements.

Subpart J—Disclosure of Information to the Department of Housing and Urban Development and Public Housing Agencies

Subpart J implements section 303(i), SSA.

Subpart J replaces only those parts of UIPL 11-89 related to the disclosure of information under section 303(i), SSA.

Section 603.90, *Purpose and application*, sets forth the requirement under section 303(i), SSA, that a State agency disclose certain information to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency for the purposes of determining an individual's eligibility for, or amount of, benefits under a housing assistance program of the Department of Housing and Urban Development. Subpart J applies only to State agencies.

Also, § 603.90 notes that section 904(c)(2) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) provides certain protections for applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development in connection with the use of information obtained pursuant to section 303(i), SSA.

In addition, § 603.90 notes that section 904(c)(3) of the Stewart B. McKinney Act sets forth criminal penalties for certain misconduct in connection with information within the purview of section 303(i), SSA, as well as certain remedies for applicants and recipients who were subjected to misconduct with respect to such information. The Department of Labor is not, however, responsible for administering sections 904(c)(2) and 904(c)(3) of the Stewart B. McKinney Act.

Paragraph (a) of § 603.91, *Definitions*, defines "consent form" by reference to section 904(b) of the Stewart B. McKinney Act of 1988 (Pub. L. 100-628). The form, giving consent for release of information, must be signed by an individual before the State agency

provides information specified in § 603.92.

Paragraph (b) of § 603.91 defines "public housing agency" by reference to section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)). The term means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing. The term does not include a private owner responsible for determining eligibility for or level of benefits under the Act.

Section 603.92, *Disclosure of information*, incorporating statutory language, provides that disclosure be made upon request and include certain wage (in substance present part 603 definition) and limited claim (as specified in the statute) information contained in the records of the State agency.

Section 603.93, *Frequency and format of disclosure*, provides that the frequency and format of the information disclosed under this subpart be determined by agreement in accordance with paragraph (b)(3) of § 603.14. The format and frequency are not specifically prescribed in order to allow the needed flexibility among State agencies and Federal, State, and local agencies requesting information.

Sections 603.94, 603.95, 603.96, and 603.97 address payment of costs, safeguards for disclosed information, agreements, and effectuating compliance, respectively, and make applicable by reference the requirements of the relevant sections of subpart B of part 603. Section 303(i), SSA, explicitly requires payment of costs, adoption of safeguards, and substantial compliance with Federal requirements, but does not require execution of an agreement. All conditions are imposed under the controlling interpretation of section 303(a)(1), SSA.

Subpart K—Disclosure of Information to Public Agencies Administering Programs of Aid to Families with Dependent Children

Subpart K implements section 3304(a)(16), FUTA, (26 U.S.C. 3304(a)(16)).

Subpart K replaces only those parts of UIPL 21-78 related to the disclosure of information under section 3304(a)(16), FUTA.

Section 603.100, *Purpose and application*, sets forth the requirement under section 3304(a)(16), FUTA that a State agency disclose certain

information to a State or political subdivision thereof administering a State plan for aid and services to needy families with children approved under part A of title IV, SSA, for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services.

Also, § 603.100 notes that disclosure of information required by subpart K is in addition to the disclosure requirements of subparts C, implementing IEVS, and L. subpart K applies only to State agencies.

Section 603.101, *Disclosure of information*, incorporating statutory language, provides that disclosure be made upon request and include wage information (determined necessary by the Secretary of Health and Human Services) contained in the records of the State agency.

Sections 603.102 and 603.104 address payment of costs and agreements, respectively, and make applicable by reference the requirements of the relevant sections of subpart B of part 603. Section 3304(a)(16), FUTA, does not require payment of costs or adoption of an agreement but these conditions are imposed under the controlling interpretation of section 303(a)(1), SSA.

Section 603.103, *Safeguards for disclosed information*, makes applicable by reference the requirements of 45 CFR 205.50. Section 3304(a)(16), FUTA, requires establishment of safeguards as determined necessary by the Secretary of Health and Human Services. Regulations at 45 CFR 205.50 will govern the adoption of safeguards required by this subpart.

Section 603.105, *Effectuating conformity and compliance*, makes applicable the conformity and substantial compliance requirements of section 3304(c), FUTA, and 20 CFR 601.5(a). Section 3304(c), FUTA, requires such conformity and substantial compliance with the requirements of section 3304(a)(16).

Subpart L—Disclosure of Information Under the Wagner-Peyser Act

Subpart L implements section 3(b) of the Wagner-Peyser Act with respect to the disclosure of information by State unemployment compensation agencies. It is not applicable to State employment service agencies.

Section 603.110, *Purpose and application*, sets forth the requirement under section 3(b) of the Wagner-Peyser Act that a State agency disclose upon request certain information to various agencies administering Federally-assisted programs. The relevant agencies are:

- A public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act;
- A public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act; the programs referred to are not limited to those related to child support enforcement as in subparts C, G, and I of part 603 because section 3(b) of the Wagner-Peyser Act includes all programs of IV.D agencies; and
- Any State or local agency (as defined in 7 U.S.C. 2012(n)(1)) which is charged with the administration of the food stamp program in the State under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*). Indian tribal organizations are not included in this subpart.

Also, § 603.110 notes that the disclosure of information required by subpart L is in addition to the disclosure requirements of subparts C, implementing IEVS, F, G, I, and K. Subpart L applies only to State agencies.

Section 603.111, *Disclosure of information*, incorporating statutory language, provides that the disclosure of information be made upon request and include specific information related to unemployment compensation (language similar to present part 603) and offers of employment (as specified in the statute).

Sections 603.112, 603.113, and 603.114 address payment of costs, safeguards for disclosed information, and agreements, respectively, and make applicable by reference the requirements of the relevant sections of subpart B of part 603. Section 3(b) of the Wagner-Peyser Act does not explicitly require payment of costs, adoption of safeguards, or execution of an agreement, but these conditions are imposed under the controlling interpretation of section 303(a)(1), SSA.

Section 603.115, *Effectuating compliance*, makes applicable the substantial compliance requirements of paragraphs (b) and (c) of § 603.16 insofar as section 3(b) of the Wagner-Peyser Act imposes requirements upon State (unemployment compensation) agencies. The rationale and justification for this treatment are fully discussed in the first part of the **SUPPLEMENTARY INFORMATION** section of this preamble. The statute furnishes no effective enforcement tool applicable to State agencies.

General Comments

It is the Department's intent that these rules shall preempt any State open

records or similar law that is inconsistent with them. Therefore, pending implementation of the final rule, each State should plan to review its open records law in order to amend the statute, where necessary, to ensure that the law of the State contains provisions which are interpreted and applied consistently with the requirements of part 603.

Again, pending implementation of the final rule, each State should plan to review all existing agreements with agencies, entities, or contractors requesting disclosure of information to ensure that the requirements of § 603.14 are met. For example, existing agreements required by present part 603 would be required to be changed to accord with subpart C of this part 603.

Drafting Information

This document was prepared under the direction and control of the Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: 202-535-7831 (this is not a toll free number).

Classification—Executive Order 12291

The proposed 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 Act

A request to revise the approval of the information collection requirements contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980, as amended. The collection requirements of present part 603 (Income and Eligibility Verification System) have been approved under control number 1205-0238, expiring August 31, 1994.

The estimated annual recordkeeping burden is approximately 32 hours per State (based on an average 8 records per State at 4 hours per record); the estimated total annual burden is 1,696

hours. Send comments regarding this burden estimate or any other aspect of this recordkeeping requirement to Mary Ann Wyrsh, Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-4231, Washington, DC 20210, and to the Office of Management and Budget, Paperwork Reduction Project (1205-0238), Washington, DC 20503.

Regulatory Flexibility Act

This proposed rule will have no "significant economic impact on a substantial number of small entities" under 5 U.S.C. 605(b). This proposed rule amends the regulations for the State Income and Eligibility Verification System and affects only the States, and State agencies, which are not within the definition of "small entity" under 5 U.S.C. 601(6). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 603

Employment and Training Administration, Labor, and Unemployment Compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

Words of Issuance

For the reasons set forth in the Preamble, it is proposed that part 603 of title 20, Code of Federal Regulations, be revised as set forth below.

Signed at Washington, DC on March 13, 1992.

Roberts T. Jones,
Assistant Secretary of Labor.

PART 603—FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF STATE RECORDS

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Appendix A—Memorandum of Understanding Between the Secretaries of Labor and Health and Human Services

Authority: 42 U.S.C. 1302(a); 26 U.S.C. 7805(a); Secretary's Order No. 4-75 (40 FR 18515).

Subpart A—In General

§ 603.1 Purpose.

The regulations in this part 603:

(a) Prescribe comprehensive rules for protecting the confidentiality of State records for the purposes of the Federal-State unemployment compensation program;

(b) Define the limits on the rule of confidentiality;

(c) Set forth the statutorily required and permitted exceptions to the rule of confidentiality;

(d) Prescribe the conditions under which required and permitted disclosures may be made; the conditions include payment of costs, safeguards for disclosed information, and execution of agreements; and

(e) Set forth the processes through which the Secretary of Labor determines whether a State law fails to conform with Federal law requirements for State laws or whether a State or State agency has failed to comply substantially with

any of the requirements of applicable Federal law and this part 603.

§ 603.2 Scope.

This part 603 is a compendium of all of the requirements of statutory provisions relating to the confidentiality and disclosure of State records compiled or maintained for the purposes of the Federal-State unemployment compensation program. Part 603 is arranged in the following subparts:

(a) *Subpart A* describes the purpose and scope of part 603 and the definitions common to all subparts;

(b) *Subpart B* prescribes the rule of confidentiality, the disclosures required notwithstanding such rule, the exceptions to such rule, the conditions common to subparts B through L on disclosure of information, and the remedial processes for resolving conformity and compliance issues (section 303(a)(1) of the Social Security Act);

(c) *Subpart C* sets forth the requirements for disclosure of information under the Income and Eligibility Verification System, with references to the requirements that States have wage record systems and that claimants furnish statements regarding their social security account numbers and nationality or immigration status (section 303(f) of the Act);

(d) *Subpart D* sets forth the requirements for disclosure of information to agencies of the United States charged with the administration of public works or assistance through public employment (section 303(a)(7) of the Act);

(e) *Subpart E* sets forth the requirements for disclosure of information to the Railroad Retirement Board (section 303(c)(1) of the Act);

(f) *Subpart F* sets forth the requirements for disclosure of information to the United States Department of Agriculture and State food stamp agencies, with reference to the intercept of unemployment compensation to cover food stamp overissuances (section 303(d) of the Act);

(g) *Subpart G* sets forth the requirements for disclosure of information to State and local governmental child support enforcement agencies with reference to the intercept of unemployment compensation to cover child support obligations (section 303(e) of the Act);

(h) *Subpart H* sets forth the requirements for disclosure of information necessary to effect interstate offset and cross-program offset of overpayments (section 303(g) of the Act);

(i) *Subpart I* sets forth the requirements for disclosure of information to the Secretary of the United States Department of Health and Human Services for the purposes of the child support enforcement program (section 303(h) of the Act);

(j) *Subpart J* sets forth the requirements for disclosure of information to the United States Department of Housing and Urban Development and public housing agencies, with references to protection for applicants and recipients and applicable criminal penalties and civil actions for improper disclosures (section 303(i) of the Act);

(k) *Subpart K* sets forth the requirements for disclosure of information to public agencies which administer the Federally-assisted program of aid to families with dependent children (section 3304(a)(16) of the Federal Unemployment Tax Act);

(l) *Subpart L* sets forth the requirements for disclosure of information to public agencies administering programs under parts A and D of title IV of the Social Security Act and the Food Stamp Act (section 3(b) of the Wagner-Peyser Act).

§ 603.3 Definitions.

For the purposes of this part 603:

(a) *Compensation and unemployment compensation* mean cash benefits payable to individuals with respect to their unemployment.

(b) *Department* means the United States Department of Labor and, within the Department, the Employment and Training Administration and the Bureau of Labor Statistics.

(c) *Records* means all information in the files of a State agency, or, in the case of wage information, files accessible by the State agency as required by section 1137(a)(3) of the Social Security Act, 42 U.S.C. 1320b-7(a)(3): Provided, that, for the purposes of subpart B of this part 603, the term "records" also means all information in any other files of the executive branch of the State Government which relate to the administration of the State law.

(d) *Request* means a written request from an authorized official of a Federal, State, or local governmental agency requesting information contained in the records of a State agency.

(e) *Secretary* means the Secretary of Labor, the cabinet officer heading the United States Department of Labor.

(f) *State* means one of the States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(g) *State agency* means the agency charged with the administration of the State unemployment compensation law which has been approved under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

(h) *State law* means the unemployment compensation law of a State, approved under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

(i) *Wage information* means information contained in the records of a State agency concerning—

(1) The wages paid to an individual,

(2) The social security account number (or numbers, if more than one) of such individual, and

(3) The name, address, State, and the Federal employer identification number of the employer who paid such wages to such individual.

Subpart B—Confidentiality Requirement of Section 303(a)(1) of the Social Security Act

§ 603.10 Purpose and application.

(a) *Purpose.* The regulations in this subpart B set forth the Department of Labor's interpretation of the "methods of administration" requirements of section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)), as such requirements concern the confidentiality of information in the records of a State or State agency relating to the administration of the State law.

(b) *Application.* This subpart B applies to each State agency, and to the executive branch of the State Government of each State.

§ 603.11 Interpretation and application.

(a) *Interpretation and application of section 303(a)(1).* (1) *Statute.* Section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)) provides that, for the purposes of certification of payment of granted funds to a State under section 302(a) (42 U.S.C. 502(a)), the State law of the State shall include provision for "[s]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due * * *".

(2)(i) *Interpretation.* Section 303(a)(1) of the Social Security Act is interpreted by the Department as requiring that the "methods of administration" that are reasonably calculated to insure the full payment of unemployment compensation when due must include provision for—

(A) Maintaining the absolute confidentiality of all information of whatever kind or form in the records of

a State agency (or in any other files of the executive branch of the State Government) which pertain to the State law or the administration thereof, and barring the disclosure of any such information to all persons, organizations, and entities whatever, except as disclosure may be required or permitted in accordance with any other provision of this section, and

(B) The mandatory disclosure to claimants and potential claimants for compensation, and to employers and employing units, of all information in the records of a State or State agency, but only to the extent that such disclosure will reasonably afford such claimants and employers the opportunity to know, establish, and protect their rights and meet their responsibilities under the State law, and such disclosure as is required in accordance with any other provisions of this section.

(ii) *Application.* Each State law must contain provisions which are interpreted and applied consistently with the interpretations in this paragraph (a)(2), and provide for penalties for any disclosure of information which is inconsistent with any provision of this section by any official or employee of the State or State agency, or contractor, or by any other person, organization, or entity. The requirements of this clause (ii) will be deemed to be met if the State law and administration fully accord with these requirements, and there is no other law of the State that is construed as requiring or authorizing a different or conflicting result.

(b) *Interpretative rule inapplicable.* The rule of confidentiality specified in paragraph (a)(2)(i)(A) of this section shall be deemed to be inapplicable, and section 303(a)(1) of the Social Security Act is interpreted as requiring disclosure of all relevant information in the following circumstances:

(1) *State agency.* (i) *In general.* Disclosure of information to or by officials and employees of the State and State agency, shall be required to the extent that such disclosure is necessary for the proper administration of the State law.

(ii) *Definition.* The phrase "officials and employees of the State and State agency" means and includes only those public officials and public employees of the executive branch of the State government engaged in the administration or enforcement of the State law, and to the extent that officials and employees of political subdivisions of the State are involved in the enforcement of the State law such phrase also includes such local governmental officials and employees.

(2) *Judicial and quasi-judicial proceedings.* Disclosure of information by all officials and employees of the State and State agency shall be required to be made for the record in any judicial or quasi-judicial proceedings under the State law, including first and second stage appeals, to the extent that such disclosure is necessary to a full development of the facts on the issues in any such proceeding and to enable the presider to make an informed decision on the merits. Any information so disclosed, and made a part of the record in any such proceedings, shall not thereafter be subject to the rule of confidentiality as set forth in paragraph (a)(2)(i)(A) of this section.

(3) *Other agencies.* (i) *In general.* Disclosure of information to officials and employees of other State, local, and Federal agencies shall be required to the extent that such disclosure is necessary for the proper administration of the State law. For the purposes of this paragraph (b)(3), disclosures to Federal agencies—

(A) Shall include disclosure of information to the United States Immigration and Naturalization Service relative to the verification of immigration status as required by section 1137(d) of the Social Security Act, and

(B) May include disclosure of information or certifications requested or required by the Internal Revenue Service of the United States Department of the Treasury for any of the purposes of administration or enforcement of Chapter 23 of the Internal Revenue Code of 1986.

(ii) *Definition.* The phrase "other State, local, and Federal agencies" includes other agencies of the State Government or of another State (including the State agency of another State), local governmental agencies of the State, and any Federal agency.

(4) *Claimants and employers.* In addition to the disclosure of information required by paragraph (a)(2)(i)(B) of this section, disclosure of information to claimants and potential claimants for compensation, and to employers and employing units, shall be required to the extent that such disclosure is necessary for the proper administration of the State law, except that, as provided in paragraph (a)(2)(ii) of this section, employers and employing units may not disclose or redisclose the name or any identifying particular about a claimant or potential claimant for compensation for any purpose other than the administration of the State law.

(5) *Department of Labor.* (i) *In general.* The rule of confidentiality specified in paragraph (a)(2)(i)(A) of this

section shall have no applicability to the Department concerning any information requested or required under—

(A) Title III, VII, IX, XI, or XII of the Social Security Act, and chapter 23 (FUTA) of the Internal Revenue Code of 1986,

(B) Parts 601 through 608 and parts 615, 616, 640, and 650 of this chapter, and any subsequently added parts of this chapter pertaining to the Federal-State unemployment compensation program,

(C) Parts 31, 32, 93, 96, 97, and 98 of title 29 of the Code of Federal Regulations, and any subsequently added parts of such title 29 which are applicable to the Federal-State unemployment compensation program, or

(D) Section 3(b) of the Wagner-Peyser Act (29 U.S.C. 49b(b)).

for any of the purposes of the Federal-State unemployment compensation program, or with respect to any information the Department deems necessary to assure the correctness or verification of any such information requested or required for any such purpose.

(ii) *Definition.* For the purposes of this paragraph (b)(5) the term "Department" includes the Department (as defined at § 603.3(b)), the Inspector General for the Department, the Comptroller General of the United States, and any contractor for the Department or the Inspector General.

(iii) *Bureau of Labor Statistics.* None of the provisions of this Subpart B shall be applicable to any information obtained solely for the purposes of cooperative agreements entered into with the Bureau of Labor Statistics under the authority of 29 U.S.C. 2 and Secretary's Order No. 39-72.

(c) *Exceptions.* (1) *Optional.* (i) *In general.* (A) As an exception to the rule of confidentiality specified in paragraph (a)(2)(i)(A) of this section, the Department interprets section 303(a)(1) of the Social Security Act as not precluding the disclosure, upon request, of any information in the records of a State or State agency to any public official (other than a public official of a State, local, or Federal agency referred to in paragraph (b)(1) or (b)(3) of this section) for use in the performance of such public official's duties, and for a purpose which does not involve administration or enforcement of the State law, but only if—

(1) Disclosure of the specific information requested in any case is authorized by the State law, and

(2) The State or State agency determines in any case that such

disclosure would not violate any other law of the State which is consistent with this section, or that such disclosure would not significantly hinder or delay the processing of claims for compensation or significantly hinder other activities of the State agency, or that such disclosure would not impede the efficient administration of the State law.

(B) (1) The term "public official" as used in this paragraph (c)(1)(i) means only public officials in the executive branch of Federal, State, or local government, but such term may also be deemed to include the officials of a public agency or service delivery area for the purposes of administration of the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

(2) The phrase "for use in the performance of such public official's duties" as used in this paragraph (c)(1)(i) means that the disclosed information may be used by the public official solely for official business in connection with a law being administered or enforced by such public official.

(ii) *Contractor of State or State agency.* As a further exception to the rule of confidentiality specified in paragraph (a)(2)(i)(A) of this section, the Department interprets section 303(a)(1) of the Social Security Act as not precluding the disclosure of information in the records of a State or State agency to an individual, organization, company, or an agency for the purpose of the administration or enforcement of the State law, but only if—

(A) Disclosure of the specific information involved is authorized by the State law, and

(B) Solely to the extent that such disclosure is necessary and proper to effectuate a contract by the State or State agency with such individual, organization, company, or an agency that is fundable from funds granted under section 302(a) of the Social Security Act (42 U.S.C. 502(a)).

(2) *Mandatory.* Various statutory provisions in section 303 of the Social Security Act, section 3304(a)(16) of the Internal Revenue Code of 1986, and section 3(b) of the Wagner-Peyser Act, explicitly require the disclosure to certain public officials of specified information in the records of each State agency. All of these statutory disclosure provisions stand as exceptions to the rule of confidentiality as specified in paragraph (a)(2)(i)(A) of this section, and all of them are fully set forth in the following subparts of this part 603. The disclosure of any information in the records of a State agency to any public official, beyond that which is specifically required by any of the

following subparts of this part 603, may be made only if it is consistent with the optional provisions of clause (1)(i) of this paragraph (c) and the other terms and conditions of this subpart B.

(d) *Conditions on disclosures.* (1) *In general.* (i) Any disclosure of information referred to in paragraph (b) of this section shall be made without regard to § 603.12 (relating to payment of costs), § 603.13 (relating to safeguards), and § 603.14 (relating to agreements).

(ii) Any disclosure of information referred to in paragraph (f) of this section may similarly be made without regard to §§ 603.12, 603.13, and 603.14, except that, in the case of any disclosure made to anyone who is not a claimant or employer referred to in paragraph (a)(2)(i)(B) or paragraph (b)(4) of this section, or in the case of any disclosure which is not made in the course of the administration of the State law, the State agency may require payment of its costs of making the disclosure.

(2) *Optional disclosures.* (i) Any disclosure of information to a public official which is referred to in paragraph (c)(1)(i) of this section shall be made upon the terms and conditions as set forth therein and in §§ 603.12, 603.13, and 603.14.

(ii) Any disclosure of information to a State or State agency contractor which is referred to in paragraph (c)(1)(ii) of this section shall be made upon the terms and conditions as set forth therein and in §§ 603.13 and 603.14, but may be made without requiring payment of costs as provided in § 603.12.

(3) *Mandatory disclosures.* Any mandatory disclosure of information which is referred to in paragraph (c)(2) of this section shall be made solely upon the terms and conditions as set forth in the applicable subpart of this part 603.

(e) *Subpoenas.* Whenever a subpoena or other compulsory process of a lawful authority is served upon a State agency or the State, or any official or employee thereof, which requires the production of records or appearance for testimony upon any matter concerning administration of the State law, the State or State agency shall file and pursue diligently in the appropriate court a motion to quash the subpoena or other compulsory process. Only if such motion is denied, after a hearing in the court appropriate to the case, may the information be disclosed, and only upon such terms as the court may order, including payment of costs to the State agency and the State.

(f) *Information in the public domain.* The rule of confidentiality in paragraph (a)(2)(i)(A) of this section shall not be deemed to be applicable to information

in the public domain, which shall include—

(1) Information as to the organization of the State and the State agency, the officials and employees thereof, and appellate authorities,

(2) Information as to State law (and applicable Federal law) provisions, rules, regulations, and interpretations thereof, including statements of general policy and interpretations of general applicability, and determinations and decisions on coverage of employers, employment, and wages,

(3) Any agreement of whatever kind or nature, including interstate arrangements and reciprocal agreements and any agreement with the Department or the Secretary, relating to the administration of the State law, and

(4) Any other information or data in statistical or other general form (including charts and tables) which pertains to claims filed, benefits paid, contributions or payments in lieu of contributions, or the State unemployment fund, a Federal account, or any other special fund or account, so long as any such disclosure does not in any manner reveal the name or any identifying particular about any past or present claimant for compensation or any past or present employer or employing unit, but a State agency may decline to disclose any such information in the public domain (except to claimants and employers as provided in paragraphs (a)(2)(i)(B) and (b)(4) of this section) if the State agency determines in any case that such disclosure would violate any other law of the State which is consistent with this section, or that such disclosure would significantly hinder or delay the processing of claims for compensation or significantly hinder other activities of the State agency, or that such disclosure would impede the efficient administration of the State law.

§ 603.12 Payment of costs.

(a) *In general.* (1) Granted funds paid to a State under section 302(a) of the Social Security Act may be used to pay all costs of disclosures referred to in paragraphs (a)(2)(i)(B) and (b) of § 603.11, and for any other disclosures referred to in paragraph (c)(1)(ii) or (f) for which the costs are not charged to the recipient in accordance with § 603.11.

(2) Granted funds paid to a State under section 302(a) of the Social Security Act may not be used to pay any of the costs of making a disclosure referred to in paragraph (c)(1)(i) of § 603.11, except that payment of costs may be waived in the case of a single, isolated request for disclosure of

information if not more than an incidental amount of staff time and no more than nominal processing costs are involved in making the disclosure.

(3) Except as provided in paragraphs (a) (1) and (2) of this section, granted funds may not be used to pay any of the costs of making any disclosure.

(b) *Calculation of costs.* The costs to a State or State agency of processing and handling a request for disclosure of information shall be calculated in accordance with the cost principles and administrative requirements of 29 CFR part 97 and Office of Management and Budget Circular No. A-87. For the purpose of calculating such costs, any initial start-up costs incurred by the State agency in preparation for making the requested disclosure(s) shall be charged to and paid by the recipient. Postage or other delivery costs incurred in making any disclosure shall be considered part of the costs of making the disclosure. Penalty mail, as defined in 39 U.S.C. 3201(1), may not be used in any circumstances to transmit information being disclosed, except information referred to in paragraph (b), (c)(1)(ii), or (f) of § 603.11.

(c) *Payment of costs.* The costs to a State or State agency of making a disclosure of information, calculated in accordance with paragraph (b) of this section, shall be paid by and collected from the recipient of the information either in advance or by way of reimbursement, but if the recipient is not a public official such costs, except for good reason, must be paid and collected in advance. For the purposes of this paragraph (c), payment in advance means full payment of all costs before or at the time the disclosed information is given in hand or sent to the recipient.

§ 603.13 Safeguards for disclosed information.

(a) *In general.* With respect to disclosures of information referred to in paragraph (c)(1) of § 603.11, a State or State agency shall require the recipient to safeguard the information disclosed against unauthorized access or redisclosure, as provided in paragraphs (b) and (c) of this section, and subject to penalties provided by the State law for unauthorized disclosure of information. Such safeguards shall also be required to protect the confidentiality of all information obtained by a contractor of a State or State agency from any other source in the execution of a contract.

(b) *Recipient.* (1) The information referred to in paragraph (a) of this section shall be permitted to be used by the recipient only to the extent necessary to further the valid purposes of the recipient in discharging his or her

lawful responsibilities, and may be redisclosed by the recipient only as provided for in paragraph (c) of this section.

(2) The recipient shall be prohibited from using the information for any purpose not specifically authorized by an agreement that meets the requirements of § 603.14.

(3) The information shall be required to 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 required to be stored and processed in such a way that unauthorized persons cannot obtain the information by any means.

(5) Precautions shall be required to be taken to insure that only authorized personnel are given access to information stored in computer systems.

(6) The head of each recipient agency or entity shall be required to—

(i) Instruct all personnel having access to the information regarding confidentiality requirements, the requirements according with this subpart B, and the sanctions specified in the State law for unauthorized disclosure of information, and

(ii) Sign an acknowledgment on behalf of the recipient agency or entity attesting that all personnel having access to the information have been instructed in accordance with paragraph (b)(6)(i) of this section and will adhere to the State's or State agency's confidentiality requirements and procedures which are consistent with this subpart B and the agreement required by § 603.14, and agreeing to report any infraction of these rules to the State agency fully and promptly.

(7) The information disclosed or obtained, and any copies thereof made by the recipient agency, entity, or contractor, shall be disposed of after the purpose for which the information is disclosed is served, except for information in the record of any court of record. Disposal means return of the information to the disclosing State or State agency or destruction of the information, as directed by the State or State agency. Disposal includes deletion of personal identifiers by the State or State agency in lieu of destruction. In any case, the information disclosed shall not be archived or sent to a records center, and shall not be retained with personal identifiers for longer than ten years after receipt of the information.

(c) *Redisclosure of information.* Any recipient of information referred to in paragraph (a) of this section shall be authorized to redisclose the information solely as follows:

(1) To the individual or employer who is the subject of the information;

(2) To an attorney or other duly authorized agent representing the individual or employer;

(3) In any civil or criminal proceedings for or on behalf of a recipient agency or entity, if provision for such redisclosure is authorized under the State law and the agreement required by § 603.14; and

(4) In response to a subpoena only after a motion to quash is denied as provided in § 603.11(e).

§ 603.14 Agreements and contracts.

(a) *Requirement.* A State or State agency shall enter into a written agreement with the head of any agency or entity intending to request disclosure(s) of information, and shall enter into a written contract with any contractor to whom any information may be disclosed or who may obtain information from any other source, which is subject to the confidentiality requirements of this subpart B.

(b) *Contents of agreement or contract.* Any agreement or contract required by paragraph (a) of this section shall include, but need not be limited to, the following terms and conditions:

(1) The purposes for which the information will be requested, or furnished, and the specific information to be requested, furnished, or obtained.

(2) Identification of all officials and employees, by position, with authority to request, receive, or obtain information;

(3) The methods and timing of requests for information, including the format to be used, and the period of time needed to furnish or obtain the information;

(4) The basis for establishing the reporting periods for which information will be furnished or obtained;

(5) Provisions for paying the State agency for any costs of furnishing information, as referred to in § 603.12;

(6) Provisions for safeguards of information disclosed or obtained, as referred to in § 603.13; and

(7) Provision for on-site inspections of the agency, entity, or contractor, to assure that the requirements of the State's law and the agreement or contract required by this section are being met.

(c) *Breach of agreement or contract.*

(1) *In general.* If an agency, entity, or contractor, or any official, employee, or agent thereof, fails to comply with any provision of an agreement or contract required by this section, including timely payment of the State's or State agency's costs billed to the agency, entity, or contractor, the agreement or contract

shall be suspended, and further disclosure of information (including any disclosure being processed) to such agency, entity, or contractor is prohibited, until the State or State agency is satisfied that corrective action has been taken and there will be no further breach of the agreement or contract. In the absence of prompt and satisfactory corrective action, the agreement or contract shall be cancelled, and the agency, entity, or contractor shall be required to surrender to the State or State agency all information (and copies thereof) obtained under the agreement or contract which has not previously been furnished to the State or State agency, and any other information relevant to the agreement or contract.

(2) *Enforcement.* In addition to the actions required to be taken by paragraph (c)(1) of this section, the State or State agency shall undertake any other action under the agreement or contract, or under any law of the State or of the United States, to enforce the agreement or contract and secure satisfactory corrective action or surrender of information, and shall take other remedial actions to effect adherence to the requirements of this subpart B, including seeking damages, penalties, and restitution for any charges to granted funds and all costs incurred by the State or the State agency in pursuing the breach of the agreement or contract and enforcement as required by this paragraph (c).

§ 603.15 Notification to claimants and employers.

(a) *Claimants.* Every claimant for compensation shall be notified, at the time of filing an initial claim for compensation, and periodically thereafter, through a written statement on or provided with the initial claim form, that information in the records of the State and State agency pertaining to the claimant may be requested and utilized as provided by paragraphs (b) and (c) of § 603.11 and subparts C through L of this part 603.

Provision of a printed notice on or attached to subsequent additional claims will satisfy the requirement for periodic notice thereafter.

(b) *Employers.* Every employer subject to a State's law shall be notified, through a written statement on or provided with the employer's quarterly wage report form or reimbursement billing, that wage information, as defined in § 603.3(i), and other information pertaining to the employer may be requested and utilized as provided by paragraphs (b) and (c) of

§ 603.11 and subparts C through L of this part 603.

§ 603.16 Effectuating conformity and compliance.

(a) *Conformity.* Pursuant to section 303(b) of the Social Security Act (42 U.S.C. 503(b)) and § 601.5(a) of this chapter, whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency of a State, finds that the State law fails to conform with any of the requirements of section 303(a)(1) of the Act as provided in this subpart B, the Secretary shall notify the Governor of the State and such State agency that further payments for the administration of the State law will not be made to the State until the Secretary is satisfied that there is no longer any such failure. Until the Secretary is so satisfied, the Department shall withhold certification of further payments to such State. Section 304 of the Act (42 U.S.C. 504) shall be applicable to any finding made pursuant to this paragraph (a).

(b) *Compliance.* Pursuant to section 303(b) of the Social Security Act and § 601.5(a) of this chapter, whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency of a State, finds that the State or the State agency has failed to comply substantially with any of the requirements of section 303(a)(1) of the Act as provided in this subpart B, the Secretary shall notify the Governor of the State and such State agency that further payments for the administration of the State law will not be made to the State until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, the Department shall withhold certification of further payments to such State. Section 304 of the Act shall be applicable to any finding made pursuant to this paragraph (b).

(c) *Resolving issues.* For the purposes of resolving conformity and compliance issues, the provisions of paragraphs (a)(1), (a)(4), (b), and (d) of § 601.5 of this chapter shall apply.

Subpart C—Income and Eligibility Verification System

§ 603.20 Purpose and application.

(a) *Purpose.* The regulations in this subpart C implement section 303(f) of the Social Security Act, 42 U.S.C. 503(f). Section 303(f) of the Act requires States to have in effect an income and eligibility verification system, which meets the requirements of section 1137 of the Act, 42 U.S.C. 1320b-7, pursuant to which information is requested and exchanged for the purpose of verifying

eligibility for, and the amount of, benefits available under several Federally-assisted programs including the Federal-State unemployment compensation program.

(b) *Application.* This subpart C applies only to a State agency.

(Note: Section 1137(a)(1) of the Social Security Act provides that each State shall require claimants for compensation to furnish to the State agency their social security account numbers, as a condition of eligibility for compensation, and further requires that the States shall utilize such account numbers in the administration of the State laws. Section 1137(a)(3) of the Act further provides that employers are required to make quarterly wage reports to a State agency, or an alternative agency, for use in verifying eligibility for, and the amount of, benefits. Section 1137(d)(1) of the Act further provides that each State shall require claimants for compensation, as a condition of eligibility, to declare in writing, under penalty of perjury, whether or not the individual is a citizen or national of the United States, and, if not, that the individual is in a satisfactory immigration status. Administration of this requirement will necessarily involve the disclosure of information (in the records of a State agency) which is incidental to the disclosure of information referred to in subpart C. Other provisions of section 1137(d) of the Act require the States to obtain, and individuals to furnish, documentation relevant to immigration status, and require the States to verify immigration status with the United States Immigration and Naturalization Service. Disclosure for this purpose is governed by § 603.11(b)(3)(i)(A) and is incidental to the disclosure of information required in accordance with subpart C.)

§ 603.21 Definitions.

For the purposes of this subpart C:

(a) *Claim information* means information contained in the records of a State agency concerning:

(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 agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

(b) *Requesting agency* means:

(1) *Aid to Families with Dependent Children.* Any State or local agency charged with the responsibility of administering 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. (Disclosure to any such agency as a requesting agency under this subpart C is in addition to the disclosure requirements under subparts K and L of this part 603.)

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

(3) *Food Stamps*. Any State or local agency charged with the responsibility of administering the provisions of the Food Stamp Program under the Food Stamp Act of 1977. (Disclosure to any such agency as a requesting agency under this subpart C is in addition to the disclosure requirements under subparts F and L of this part 603.)

(4) *Other Social Security Act Programs*. Any State or local agency charged with the responsibility of administering a program under a State plan approved under title I, X, XIV, or XVI of the Social Security Act.

(5) *Child Support Enforcement*. 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. (Disclosure requirements under this subpart C for purposes of child support enforcement are in addition to disclosure of information requirements under subparts G, I, and L.)

(6) *Health and Human Services*. 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.

(c) *Wage information*. Has the same meaning as such term as defined in § 603.3(i).

§ 603.22 Notification to claimants and employers.

Every claimant for compensation and employer shall be furnished the notification required by § 603.15.

§ 603.23 Disclosure of information.

(a) *Disclosure of information*. Each State agency shall disclose, upon request, to any requesting agency, as defined in § 603.21(b), and which has entered into an agreement referred to in § 603.27, wage and claim information contained in the records of such State agency.

(b) *Format*. Standardized formats established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) and defined in 42 CFR 435.960 will be adhered to by the State agency.

§ 603.24 Obtaining information from other agencies and crossmatching with wage information.

(a) *Crossmatch with information from requesting agencies*. Each State 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, compensation payable under the State law.

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

(c) *Amplification on compliance requirements*. To the extent necessary, the Department, pursuant to section 1137(a)(2) of the Social Security Act, will amplify on the requirements for State compliance with this section in instructions issued and published for comment in the *Federal Register*.

(Approved by the Office of Management and Budget under control number 1205-0238)

§ 603.25 Payment of costs.

As a condition for receiving information referred to in § 603.23, any Federal, State, or local agency requesting such information shall be required to reimburse the State agency for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this section to be reimbursed shall be required to be calculated and paid in accordance with paragraphs (b) and (c) of § 603.12.

§ 603.26 Safeguards for disclosed information.

Each State agency shall establish safeguards, as required by section 1137(a)(5) of the Social Security Act and set forth in § 603.13, to insure that information disclosed as required by § 603.23 is used only for the purpose for which the information was disclosed.

§ 603.27 Agreements.

(a) *Agreement required*. Prior to disclosing information as required by § 603.23, each State agency shall enter into a written agreement with any requesting agency (as defined in § 603.21(b)) intending to request any such information, and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement. The requirements of this paragraph (a) also shall apply to any requesting agency in another State which intends to request information referred to in § 603.24 and

required to be disclosed by a State agency.

(b) *Breach*. The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.28 Effectuating compliance.

Whenever the Department has reason to believe that a State or State agency has failed to comply substantially with any of the requirements of this subpart C, the provisions of paragraphs (b) and (c) of § 603.16 will apply for the purposes of effecting compliance with the requirements of section 303(f) of the Social Security Act as provided in this subpart C, except that any action under this section shall be based upon section 303(f) of the Act, § 601.5(a) of this chapter, and this subpart C.

Subpart D—Disclosure of Information to Agencies Charged With the Administration of Public Works or Assistance Through Public Employment

§ 603.30 Purpose and application.

(a) *Purpose*. The regulations in this subpart D implement section 303(a)(7) of the Social Security Act, which requires a State law to provide that certain information contained in a State agency's records shall be made available to any agency of the United States charged with the administration of public works or assistance through public employment.

(b) *Application*. This subpart D applies only to a State agency.

§ 603.31 Disclosure of information.

Each State agency shall make available, upon request, to any agency of the United States charged with the administration of public works or assistance through public employment, with respect to each recipient of unemployment compensation, information from its records concerning such recipient's—

- (a) Name,
- (b) Address,
- (c) Ordinary occupation,
- (d) Employment status, and
- (e) A statement of such recipient's rights to further compensation under the State law.

§ 603.32 Payment of costs.

As a condition for receiving information referred to in § 603.31, any agency requesting such information shall be required to reimburse the State agency for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this

section to be reimbursed shall be required to be calculated and paid in accordance with paragraphs (b) and (c) of § 603.12.

§ 603.33 Safeguards for disclosed information.

Each State agency shall establish safeguards, as set forth in § 603.13, to insure that information disclosed as required by § 603.33 is used only for the purpose for which the information was disclosed.

§ 603.34 Agreements.

(a) *Agreement required.* Prior to disclosing information to an agency of the United States, as required by § 603.31, each State agency shall enter into a written agreement with that Federal agency, and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement.

(b) *Breach.* The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.35 Effectuating conformity and compliance.

Whenever the Department has reason to believe that an issue of conformity or compliance has arisen under this subpart D with respect to a State or a State agency, the provisions of paragraphs (a), (b), and (c) of § 603.16 will apply for the purposes of effecting conformity and compliance with the requirements of section 303(a)(7) of the Social Security Act as provided in this subpart D.

Subpart E—Disclosure of Information to the Railroad Retirement Board

§ 603.40 Purpose and application.

(a) *Purpose.* The regulations in this subpart E implement section 303(c)(1) of the Social Security Act, which requires that a State agency shall provide certain information contained in the State agency's records to the Railroad Retirement Board.

(b) *Application.* This subpart E applies only to a State agency.

§ 603.41 Disclosure of information.

Each State agency shall, upon request, make available information from, and furnish copies of, its records to the Railroad Retirement Board as the Board deems necessary for its purposes.

§ 603.42 Payment of costs.

As a condition for receiving information referred to in § 603.41, the Railroad Retirement Board shall be required to reimburse the State agency

for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this section to be reimbursed shall be required to be calculated and paid in accordance with paragraphs (b) and (c) of § 603.12.

§ 603.43 Safeguards for disclosed information.

Each State agency shall establish safeguards, as set forth in § 603.13, to insure that information disclosed as required by § 603.41 is used only for the purpose for which the information was disclosed.

§ 603.44 Agreements.

(a) *Agreement required.* Prior to disclosing information as required by § 603.41, each State agency shall enter into a written agreement with the Railroad Retirement Board, and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement.

(b) *Breach.* The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.45 Effectuating compliance.

Whenever the Department has reason to believe that a State or State agency has failed to comply substantially with any of the requirements of this subpart E, the provisions of paragraphs (b) and (c) of § 603.16 will apply for the purposes of effecting compliance with the requirements of section 303(c)(1) of the Social Security Act as provided in this subpart E, except that any action under this section shall be based upon section 303(c) of the Act, § 601.5(a) of this chapter, and this subpart E.

Subpart F—Disclosure of Information to the Department of Agriculture and State Food Stamp Agencies

§ 603.50 Purpose and application.

(a) *Purpose.* (1) *Disclosure.* The regulations in this subpart F implement section 303(d)(1) of the Social Security Act, which requires that a State agency disclose certain information contained in the State agency's records to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*).

(2) *Notification.* The regulations in this subpart F also implement section 303(d)(2)(B) of the Social Security Act, which permits the State agency to notify the State food stamp agency of any

individual who discloses on a new unemployment compensation claim that he or she owes an uncollected overissuance (as defined in 7 U.S.C. 2022(c)(1)) of food stamp coupons.

(Note: The regulations in this subpart do not implement clauses (i), (iii), and (iv) of section 303(d)(2)(B) of the Social Security Act which relate, respectively, to the disclosure by an individual to the State agency of such uncollected overissuance, to the deduction and withholding from unemployment compensation of money to satisfy such an obligation, and to the payment of the amount deducted and withheld to the appropriate State food stamp agency, except as the latter involves the disclosure of information.)

(3) *Cross-reference.* Disclosure of information required by this subpart F is in addition to the disclosure requirements of subparts C and L.

(b) *Application.* This subpart F applies only to a State agency.

§ 603.51 Definition.

For purposes of this subpart F, "State food stamp agency" means any State or local agency described in 7 U.S.C. 2012(n)(1) which administers the food stamp program established under the Food Stamp Act of 1977.

§ 603.52 Disclosure of information.

(a) *Disclosure.* Each State agency shall disclose, upon request, to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency any of the following information contained in the records of the State agency—

(1) Wage information (as defined in § 603.(i)),

(2) Whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

(3) The current (or most recent) home address of such individual,

(4) Whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and shall disclose any information required to be disclosed in connection with the transmittal of withheld compensation in accordance with section 303(d)(2)(B)(iv) of the Social Security Act.

(b) *Notification.* A State agency which requires each new applicant for compensation to disclose whether the applicant owes an uncollected overissuance of food stamp coupons (as permitted by section 303(d)(2)(B)(i) of the Social Security Act) may notify the State food stamp agency (to which the uncollected overissuance is owed) that

any individual who discloses such a debt has been determined to be eligible for unemployment compensation (if such determination has been made by the State agency).

§ 603.53 Payment of costs.

As a condition for receiving information referred to in § 603.52, any Federal, State, or local agency requesting such information shall be required to reimburse the State agency for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this section to be reimbursed shall be required to be calculated and paid in accordance with paragraphs (b) and (c) of § 603.12.

§ 603.54 Safeguards for disclosed information.

Each State agency shall establish safeguards, as set forth in § 603.13, to insure that information disclosed as required by § 603.52 is used only for the purpose for which the information was disclosed.

§ 603.55 Agreements.

(a) *Agreement required.* Prior to disclosing information pursuant to § 603.52, the State agency shall enter into a written agreement with the Department of Agriculture and any State food stamp agency intending to request any such information, and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement.

(b) *Breach.* The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.56 Effectuating compliance.

Whenever the Department has reason to believe that a State or State agency has failed to comply substantially with any of the requirements of this subpart F, the provisions of paragraphs (b) and (c) of § 603.16 will apply for the purposes of effecting compliance with the requirements of section 303(d) (1) and (2) of the Social Security Act as provided in this subpart F. Any action under this section to effect compliance with the requirements of section 303(d) (1) and (2) shall be based upon section 303(d)(3) of the Act, § 601.5(a) of this chapter, and this subpart F.

Subpart G—Disclosure of Information to State or Local Child Support Enforcement Agencies

§ 603.60 Purpose and application.

(a) *Purpose.* (1) *Disclosure.* The regulations in this subpart G implement section 303(e)(1) of the Social Security

Act, which requires that a State agency disclose certain information contained in the State agency's records directly to officers or employees of any State or local child support enforcement agency for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

(2) *Notification.* The regulations also implement section 303(e)(2)(A) of the Social Security Act which requires that the State agency notify the State or local child support enforcement agency of any individual who discloses on a new unemployment compensation claim that he or she owes child support obligations, that the individual has been determined to be eligible for unemployment compensation if such determination has been made by the State agency.

(Note: The regulations in this subpart do not implement clauses (i), (iii), and (iv) of section 303(e)(2)(A) of the Social Security Act which relate, respectively, to the requirement that an individual disclose that he or she owes child support obligations, to the deduction and withholding from unemployment compensation of money to satisfy such obligations, and to the payment of the amount deducted and withheld to the appropriate State or local child support enforcement agency, except as the latter involves disclosure of information.)

(3) *Cross-reference.* Disclosure of information required by this subpart G is in addition to the disclosure requirements of subparts C, I, and L.

(b) *Application.* This subpart G applies only to a State agency.

§ 603.61 Definitions.

For purposes of this subpart G—

(a) "Child support obligations" only includes child support obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of the Act, and

(b) "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of the Act.

§ 603.62 Disclosure of information.

(a) *Disclosure.* Each State agency shall disclose, upon request, directly to officers or employees of any State or local child support enforcement agency any wage information (as defined in § 603.3(i)) contained in the records of the State agency, and shall disclose any information required to be disclosed in

connection with the transmittal of withheld compensation in accordance with section 303(e)(2)(A)(iv) of the Social Security Act.

(b) *Notification.* The State agency shall notify the State or local child support enforcement agency, with respect to any individual who discloses on a new unemployment compensation claim that he or she owes child support obligations, that the individual has been determined to be eligible for unemployment compensation (if such determination has been made by the State agency).

§ 603.63 Payment of costs.

As a condition for receiving information referred to in § 603.62, any agency requesting such information shall be required to reimburse the State agency for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this section to be reimbursed shall be required to be calculated and paid in accordance with paragraphs (b) and (c) of § 603.12.

§ 603.64 Safeguards for disclosed information.

Each State agency shall establish safeguards, as set forth in § 603.13, to insure that information disclosed as required by § 603.62 is used only for the purpose for which the information was disclosed.

§ 603.65 Agreements.

(a) *Agreement required.* Prior to disclosing information as required by § 603.62, each State agency shall enter into a written agreement with any State or local child support enforcement agency intending to request any such information, and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement.

(b) *Breach.* The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.66 Effectuating compliance.

Whenever the Department has reason to believe that a State or State agency has failed to comply substantially with any of the requirements of this subpart G, the provisions of paragraphs (b) and (c) of § 603.16 will apply for the purposes of effecting compliance with the requirements of section 303(e) (1) and (2) of the Social Security Act as provided in this subpart G. Any action under this section to effect compliance with the requirements of section 303(e) (1) and (2) shall be based upon section

303(e)(3) of the Act, § 601.5(a) of this chapter, and this subpart G.

Subpart H—Disclosure of Information Related to Recovery of Overpayments

§ 603.70 Purpose and application.

(a) *Purpose.* (1) *In general.* The regulations in this subpart H govern the disclosure of information required in carrying out the interstate offset and cross-program offset agreements which are authorized by section 303(g) of the Social Security Act. Under section 303(g) of the Act, States are permitted to withhold unemployment compensation payable under State laws to recover overpayments of benefits made to individuals by other States. Also, an overpayment of State unemployment compensation may be recovered from a payment made under a Federal unemployment benefit or allowance program if the State has entered into an agreement with the Secretary of Labor under section 303(g)(2) of the Act, pursuant to which it may recover overpayments of State benefits from payments made under a Federal unemployment benefit or allowance program if it reciprocally recovers overpayments made under Federal unemployment benefit or allowance programs from State payments. Specifically, this section permits interstate same program offsets (i.e., State from State and Federal from Federal) and intrastate and interstate cross-program offsets (i.e., State from Federal and Federal from State). Such interstate recovery of overpayments necessarily requires the disclosure of information contained in State agency records to State agencies in other States. This subpart H does not implement the requirements for such offsets beyond those relating to the disclosure of information.

(2) *Definition.* For purposes of this section the term "Federal unemployment benefit or allowance program" means any program established by Federal statute and administered by the Department, which provides for the payment from Federal funds of compensation to individuals. Existing programs provide for the payment of unemployment compensation to Federal employees (part 609 of this chapter), unemployment compensation to ex-servicemembers (part 614 of this chapter), trade readjustment allowances under the trade adjustment assistance program (part 617 of this chapter), disaster unemployment assistance (part 625 of this chapter), and weekly layoff benefits under the redwood employee protection program (29 CFR part 92).

(b) *Application.* This subpart H applies only to a State agency.

§ 603.71 Disclosure of information.

Each State agency may disclose to a State agency of another State only that unemployment compensation information which is necessary to effectuate the recovery of overpayments from individuals as authorized by the State law in accordance with section 303(g) of the Social Security Act, and to effectuate the purposes of interstate same program and cross-program offset shall disclose such information from its records as is necessary to accomplish these purposes. Similarly, a State agency effecting an offset may disclose to the other State agency only such information as is necessary for the purposes of the interstate agreement.

§ 603.72 Payment of costs.

Payment of costs is neither appropriate nor required with respect to disclosures of information referred to in § 603.71. Penalty mail, as defined in 39 U.S.C. 3201(1), may be used in making such disclosures.

§ 603.73 Safeguards for disclosed information.

A State agency receiving information referred to in § 603.71 may use it only for purposes of recovering the overpayment for which the information was disclosed. With respect to any information received under the interstate agreement, the receiving State agency shall be subject to the confidentiality requirements of § 603.13 of subpart B of this part 603.

§ 603.74 Agreements.

Section 303(g)(2) of the Social Security Act requires an agreement between each State and the Secretary of Labor to authorize cross-program offsets (either intrastate or interstate). A properly executed agreement must be in effect before any cross-program offset may occur or information may be disclosed. No agreement with the Secretary is required for interstate, same program offsets. For interstate, same program offsets, reciprocal arrangements between and among the States are appropriate. An agreement such as that required by § 603.14 is neither appropriate nor required under this subpart H.

§ 603.75 Effectuating compliance.

Whenever the Department has reason to believe that a State or State agency (the disclosing State agency or the receiving State agency) has failed to comply substantially with any of the requirements of this subpart H, the provisions of paragraphs (b) and (c) of

§ 603.16 will apply for the purposes of effecting compliance with the requirements of section 303(g) (1) and (2) of the Social Security Act and the agreement between the State and the Secretary of Labor, as provided in this subpart H, except that any action under this section shall be based upon section 303(g) of the Act, § 601.5(a) of this chapter, and this subpart H.

Subpart I—Actions Required by State Agencies To Enable the Secretary of Health and Human Services To Obtain Prompt Access to Information

§ 603.80 Purpose and application.

(a) *Purpose.* (1) *In general.* The regulations in this subpart I implement section 303(h) of the Social Security Act, which requires that a State agency take action necessary to enable the Secretary of Health and Human Services (HHS), in accordance with the "Memorandum of Understanding" (appendix A of this part) between the Secretaries of Labor and HHS, to obtain prompt access to certain information contained in the State agency's records for purposes of carrying out the child support enforcement program under title IV, section 453 of the Act (42 U.S.C. 653). The Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services performs this function on behalf of the Secretary of HHS.

(2) *Cross reference.* Disclosure of information required by this subpart I is in addition to the disclosure requirements of subparts C, G, and L.

(b) *Application.* This subpart I applies only to a State agency.

§ 603.81 Disclosure of information.

Each State agency shall disclose, upon request, to officers or employees of OCSE any of the following information contained in the records of such State agency—

(a) Wage information (as defined in § 603.3(i)),

(b) Claim information (as defined in § 603.21(a)),

and

(c) any other information that may be useful in locating an absent parent or such parent's employer.

§ 603.82 Payment of costs.

As a condition for receiving information referred to in § 603.81, the OCSE shall be required to reimburse the State agency for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this section to be reimbursed shall be required to be calculated and paid in

accordance with paragraphs (b) and (c) of § 603.12.

§ 603.83 Safeguards for disclosed information.

Each State agency shall establish safeguards, as set forth in § 603.13, to insure that information disclosed as required by § 603.81 is used only for the purpose for which the information was disclosed.

§ 603.84 Agreements.

(a) *Agreement required.* As specified in the "Memorandum of Understanding" between the Secretaries of Labor and Health and Human Services (appendix A of this part), the Secretaries have agreed that the OCSE will enter into a written agreement with a State agency to act as OCSE's agent in establishing an arrangement with a contractor coordinating the information exchange for the purpose of facilitating the transmission of requests and responses to requests for information as provided in § 603.81. Prior to disclosing any information as required by § 603.81, each State agency shall enter into a written agreement with OCSE and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement.

(b) *Breach.* The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.85 Effectuating compliance.

Whenever the Department has reason to believe that a State or State agency has failed to comply substantially with any of the requirements of this subpart I, the provisions of paragraphs (b) and (c) of § 603.16 will apply for the purposes of effecting compliance with the requirements of section 303(h) of the Social Security Act as provided in this subpart I, except that any action under this section shall be based upon section 303(h)(2) of the Act, § 601.5(a) of this chapter, and this subpart I.

Subpart J—Disclosure of Information to the Department of Housing and Urban Development and Public Housing Agencies

§ 603.90 Purpose and application.

(a) *Purpose.* The regulations in this subpart J implement section 303(i) of the Social Security Act, which requires that a State agency disclose certain information contained in the State agency's records to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency for the purposes of determining

an individual's eligibility for, or amount of, benefits under a housing assistance program of the Department of Housing and Urban Development.

(Note: Section 904(c)(2) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) provides certain protections for applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development in connection with the use of information obtained pursuant to section 303(i) of the Social Security Act. In addition, section 904(c)(3) of the Stewart B. McKinney Act sets forth criminal penalties for certain misconduct in connection with information within the purview of section 303(i) of the Social Security Act, as well as certain remedies for applicants and recipients who were subjected to misconduct with respect to such information. The Department of Labor is not, however, responsible for administering sections 904(c)(2) and 904(c)(3) of the Stewart B. McKinney Act, 42 U.S.C. 3544 (c)(2) and (c)(3).)

(b) *Application.* This subpart J applies only to a State agency.

§ 603.91 Definitions.

For purposes of this subpart J—

(a) "Consent form" means the consent form referred to in section 904(b) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628), which is signed by an individual to signify consent to the release of information contained in the State agency's records and specified in § 603.92 with respect to such individual.

(b) "Public housing agency", as described in section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)), means " * * any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing."

§ 603.92 Disclosure of information.

Each State agency shall disclose, upon request, to officers or employees of the Department of Housing and Urban Development and to representatives of a public housing agency, concerning any individual applying for or participating in any housing assistance program administered by the Department of Housing and Urban Development who has signed a consent form, any of the following information contained in the records of such State agency—

(a) Wage information (as defined in § 603.3(i)), and

(b) Whether the individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any

such compensation being received (or to be received) by such individual.

§ 603.93 Frequency and format of disclosure.

The frequency and format of the information disclosed shall be determined by agreement in accordance with paragraph (b)(3) of § 603.14.

§ 603.94 Payment of costs.

As a condition for receiving information referred to in § 603.92, the Department of Housing and Urban Development or any public housing agency receiving such information shall be required to reimburse the State agency for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this section to be reimbursed shall be required to be calculated and paid in accordance with paragraphs (b) and (c) of § 603.12.

§ 603.95 Safeguards for disclosed information.

Each State agency shall establish safeguards, as set forth in § 603.13, to insure that information disclosed as required by § 603.92 is used only for the purpose for which the information was disclosed.

§ 603.96 Agreements.

(a) *Agreement required.* Prior to disclosing information as required by § 603.92, each State agency shall enter into a written agreement with the Department of Housing and Urban Development or a public housing agency intending to request any such information, and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement.

(b) *Breach.* The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.97 Effectuating compliance.

Whenever the Department has reason to believe that a State or State agency has failed to comply substantially with any of the requirements of this subpart J, the provisions of paragraphs (b) and (c) of § 603.16 will apply for the purposes of effecting compliance with the requirements of section 303(i)(1) and (2) of the Social Security Act as provided in this subpart J, except that any action under this section shall be based upon section 303(i)(3) of the Act, § 601.5(a) of this chapter, and this subpart J.

Subpart K—Disclosure of Information to Public Agencies Under the Federal Unemployment Tax Act

§ 603.100 Purpose and application.

(a) *Purpose.* (1) *In general.* The regulations in this subpart K implement section 3304(a)(16) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(16)), which requires a State agency to disclose certain wage information contained in the State agency's records to a State or political subdivision thereof administering a State plan for aid and services to needy families with children approved under part A of title IV of the Social Security Act, for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services.

(2) *Cross-reference.* Disclosure of information required by this subpart K is in addition to the disclosure requirements of subparts C and L.

(b) *Application.* This subpart K applies only to a State agency.

§ 603.101 Disclosure of information.

Each State agency shall disclose, upon request, to any public agency referred to in § 603.100 any wage information (as determined necessary by the Secretary of Health and Human Services in regulations) contained in the records of the State agency.

§ 603.102 Payment of costs.

As a condition for receiving information referred to in § 603.101, any public agency requesting such information shall be required to reimburse the State agency for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this section to be reimbursed shall be required to be calculated and paid in accordance with paragraphs (b) and (c) of § 603.12.

§ 603.103 Safeguards for disclosed information.

Each State agency shall establish safeguards as are determined necessary by the Secretary of Health and Human Services in regulations at 45 CFR 205.50.

§ 603.104 Agreements.

(a) *Agreement required.* Prior to disclosing information as required by § 603.101, each State agency shall enter into a written agreement with any public agency referred to in § 603.100 which intends to request any such information, and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement. For purposes of this subpart K, the provision of safeguards as required by paragraph (b)(6) of § 603.14

refers to safeguards established under 45 CFR 205.50.

(b) *Breach.* The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.105 Effectuating conformity and compliance.

Pursuant to section 3304(c) of the Federal Unemployment Tax Act and § 601.5(a) of this chapter, whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency of a State, finds that a State law fails to contain each of the provisions required by section 3304(a)(16) of the Federal Unemployment Tax Act to be included therein, or has failed to comply substantially with any of the provisions of such section or this subpart K, the Secretary of Labor shall make no certification under section 3304(c) of the Act to the Secretary of the Treasury with respect to such State as of October 31 of the 12-month period with respect to which such finding is made. Section 3310 of the Federal Unemployment Tax Act shall be applicable to any finding made under this paragraph (a).

Subpart L—Disclosure of Information to Public Agencies under the Wagner-Peyser Act

§ 603.110 Purpose and application.

(a) *Purpose.* (1) *In general.* The regulations in this subpart L implement section 3(b) of the Wagner-Peyser Act, to the extent that such section requires a State agency to furnish certain information contained in the State agency's records to—

(i) An agency of the State or political subdivision thereof administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act,

(ii) A State or local agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act, and

(iii) Any State or local agency (as defined in 7 U.S.C. 2012(n)(1)) which is charged with the administration of the food stamp program in the State under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*).

(2) *Cross references.* (i) *Part A of title IV.* The disclosure of information required by clause (1)(i) of this paragraph (a) is in addition to the disclosure requirements of subparts C and K.

(ii) *Part D of title IV.* The disclosure of information required by clause (1)(ii) of

this paragraph (a) is in addition to the disclosure requirements of subparts C, G, and I.

(iii) *Food stamp program.* The disclosure of information required by clause (1)(iii) of this paragraph (a) is in addition to the disclosure requirements of subparts C and F.

(b) *Application.* This subpart L applies only to a State agency.

§ 603.111 Disclosure of information.

Each State agency shall disclose, upon request, to any public agency referred to in § 603.110, any of the following information contained in the records of the State agency—

(a) Whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual,

(b) The current (or most recent) home address of such individual, and

(c) Whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor.

§ 603.112 Payment of costs.

As a condition for receiving information referred to in § 603.111, any public agency requesting such information shall be required to reimburse the State agency for all costs incurred in making any such disclosure, including any initial start-up costs. Costs required by this section to be reimbursed shall be required to be calculated and paid in accordance with paragraphs (b) and (c) of § 603.12.

§ 603.113 Safeguards for disclosed information.

Each State agency shall establish safeguards, as set forth in § 603.13, to insure that information disclosed as required by § 603.111 is used only for the purpose for which the information was disclosed.

§ 603.114 Agreements.

(a) *Agreement required.* Prior to disclosing information as required by § 603.111, each State agency shall enter into a written agreement with any public agency referred to in § 603.110 which intends to request any such information, and any such agreement shall accord with the requirements of § 603.14(b) with respect to the contents of such agreement.

(b) *Breach.* The provisions of § 603.14(c) shall be applicable in the case of any breach of an agreement referred to in paragraph (a) of this section.

§ 603.115 Effectuating compliance.

Whenever the Department has reason to believe that a State or State agency has failed to comply substantially with any of the requirements of section 3(b) of the Wagner-Peyser Act, as provided in this Subpart L for the purposes of the Federal-State unemployment compensation program, the provisions of paragraphs (b) and (c) of § 603.16 will apply for the purposes of effecting compliance with the requirements of section 3(b) of the Wagner-Peyser Act as provided in this subpart L, except that any action under this paragraph (b) shall be based upon section 303(b) of the Social Security Act, § 601.5(a) of this chapter, and this subpart L. Section 304 of the Social Security Act shall be applicable to any finding made under this paragraph (b).

Appendix A to Part 603—Memorandum of Understanding Between The Department of Labor and the Department of Health and Human Services

I. Purpose

To record the agreement and understanding between the Secretary of Labor and the Secretary of Health and Human Services to implement section 453(e)(3) of the Social Security Act (the Act), and assist with implementing the requirements of section 303(h) of such Act (as amended by section 124 of the Family Support Act of 1988, Pub. L. 100-485).

II. Background

A. Section 453 of the Social Security Act established the Federal Parent Locator Service (FPLS), within the Office of Child Support Enforcement (OCSE), to obtain and transmit information to authorized persons (as defined in the Act) concerning the whereabouts of any absent parent, to be used to locate such parent for the purpose of enforcing support obligations.

B. Section 124(a) of the Family Support Act of 1988 amended section 453(e) by adding a new paragraph (3), which requires the Secretary of Labor and the Secretary of Health and Human Services to enter into an agreement to provide the FPLS with prompt access to wage and unemployment compensation claims information maintained for or by the Department of Labor (DOL) or the State Employment Security Agencies (SESAs).

C. Section 124(b) of the Family Support Act of 1988 amended section 303 of the Social Security Act by adding a new subsection (h)(1), which reads as follows:

* * * "The State agency charged with the administration of the State law shall take such actions (in such manner as may be provided in the agreement between the Secretary of Health and Human Services and the Secretary of Labor under section 453(e)(3)) as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and unemployment compensation claims information (including any information that might be useful in locating an absent parent or such parent's employer) for use by the Secretary of Health and Human Services, for purposes of section 453, in carrying out the child support enforcement program under title IV."

D. The amendments made by section 124 become effective on the first day of the first calendar quarter which begins 1 year or more after the date of enactment of the Family Support Act of 1988, except that the Secretaries of Labor and Health and Human Services are directed to enter into the agreement required by section 453(e)(3) not later than 90 days after date of enactment.

E. This Memorandum of Understanding constitutes the formal agreement required by section 453(e)(3), and sets forth the responsibilities of both Departments and the SESAs under section 303(h)(1).

III. Understandings

A. The Secretaries agree that, pursuant to section 303(h)(1), the only information that may be requested under this agreement and the agreement with any SESA is wage and unemployment compensation claims information in the records of the SESA and any other information in the records of the SESA that might be useful in locating an absent parent or such parent's employer.

B. The Secretaries agree that the OCSE, with the assistance of DOL, will enter into specific written agreements with each SESA. Such agreements will include provisions:

(1) The purpose for which the information is requested;

(2) The specific information requested;

(3) How the information will be requested, including the request and response formats;

(4) The maximum number of records to be included in each request;

(5) Request and response schedules;

(6) Provisions for reprocessing requests;

(7) Cost of responding to requests;

(8) Reimbursement procedures;

(9) Provisions for safeguarding and protecting confidentiality of requests and responses, and limiting use or redisclosure of information to purposes authorized by law; and

(10) Provisions for notification by OCSE for appropriate action by DOL of any SESA's failure to provide prompt access to wage and

unemployment compensation claims information.

C. The Secretaries agree that the OCSE will protect the confidentiality of the information obtained under the terms of this agreement against unauthorized access or redisclosure while under the control of OCSE. The OCSE will require each State to submit an annual certification that the information obtained pursuant to this agreement will only be used for child support enforcement purposes and that such information will be safeguarded.

D. The Secretaries agree that the OCSE will enter into a written agreement with a SESA to act as OCSE's agent in establishing an arrangement with a contractor coordinating the data exchange between SESAs for the purpose of facilitating the exchange of data between the FPLS and the SESAs.

E. The Secretaries agree that the OCSE will make a reasonable effort to ensure that requests for information pertain to absent parents who no longer work or reside in the State requesting locate information through FPLS.

F. The Secretaries agree that OCSE will notify DOL in writing of any SESAs failure to provide prompt access to wage and unemployment compensation claims information as required under this agreement and the agreement between the SESA and OCSE, and DOL will take appropriate action pursuant to section 303(h)(2) of the Act.

G. The Secretaries agree that the Department of Health and Human Services (DHHS) will implement procedures that provide for the timely payment by the DHHS to each SESA of all costs incurred in providing wage and unemployment compensation claims information in accordance with this agreement and the agreement between the OCSE and the SESA.

H. The Secretaries agree that OCSE will reimburse the appropriate SESA for any costs incurred by the SESA in implementing an agreement with OCSE.

This agreement was effective as of January 11, 1989.

Department of Labor.

Dated: January 18, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

Department of Health and Human Services.

Dated: January 23, 1989.

Wayne A. Stanton,

Director, Child Support Enforcement Administration, Family Support Administration.

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