

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Office of Child Support Enforcement****45 CFR Parts 302, 303, and 307**

RIN 0970-AC01

State Parent Locator Service; Safeguarding Child Support Information

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

ACTION: Final rule.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created and expanded State and Federal title IV-D child support enforcement databases and significantly enhanced access to information for title IV-D child support purposes. States are moving toward integrated service delivery and developing enterprise architecture initiatives to link their program databases. This final rule prescribes requirements for: State Parent Locator Service responses to authorized location requests; and State IV-D program safeguarding of confidential information and authorized disclosures of this information. This rule restricts the use of confidential data and information to child support purposes, with exceptions for certain disclosures permitted by statute.

DATES: This rule is effective March 23, 2009.

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I. Statutory Authority

This final regulation is published under the authority granted to the Secretary of HHS (Secretary) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

The provisions of this final rule pertaining to the Federal Parent Locator Service (PLS) implement section 453 of the Act, 42 U.S.C. 653. Section 453 requires the Secretary to establish and conduct a Federal PLS to obtain and transmit specified information to authorized persons for purposes of establishing parentage; establishing, modifying, or enforcing child support obligations; and enforcing any Federal or State law with respect to a parental kidnapping; or making or enforcing a child custody or visitation determination, as described in section 463 of the Act. It authorizes the Secretary to use the services of State entities to carry out these functions.

The provisions relating to the State PLS implement section 454(8) of the Act, 42 U.S.C. 654(8), which requires each State plan for child support enforcement to provide that the State will: (1) Establish a service to locate parents utilizing all sources of information and available records; and the Federal PLS established under section 453; and (2) shall subject to the privacy safeguards in section 454(26) of the Act, 42 U.S.C. 654(26), disclose only the information described in sections 453 and 463 of the Act to the authorized persons specified in those sections.

The provisions relating to the States' computerized support enforcement systems implement section 454A of the Act, 42 U.S.C. 654a, which requires States' systems to perform such functions as the Secretary may specify relating to management of the State title IV-D program. Additionally, as stated in section 454A(f) of the Act, the State shall use the statewide automated system to extract information from, to share and compare information with, and to receive information from, other data bases and information necessary to enable the State agency (or the Secretary or other State or Federal agencies) to carry out the Child Support Enforcement program under title IV-D of the Act, and other programs designated by the Secretary.

In addition, the provisions pertaining to safeguarding of information implement section 454(26) of the Act, which requires the State IV-D program to have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties. Nothing in this rule is meant to prevent the appropriate use of administrative data for program oversight, management, and research.

II. Summary Description of Regulatory Provisions

The following is a summary of the regulatory provisions included in this final rule. The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on October 14, 2005 (70 FR 60038). The NPRM was organized into two major sections. Section 1: State Parent Locator Service discussed amendments to the proposed regulations on locating individuals and their assets in response to authorized location requests. Affected regulations include §§ 302.35, 303.3, 303.20, and 303.70. Section 2: Safeguarding and Disclosure of Confidential Information discussed new regulations on safeguarding and disclosure of confidential information, § 303.21 and amendments to the regulation on security and confidentiality of information in computerized support enforcement systems, § 307.13.

The Section-by-Section Discussion of Comments (Section III) provides a detailed listing of the comments and responses. Many commenters asked for points of clarification rather than for change of language in the regulation. There were some comments, however, that brought about regulatory language changes in the final rule. Specifically, major changes include:

In § 303.21(a) we deleted the last sentence "The amount of support ordered and the amount of a support collection are not considered confidential information for purposes of this section." Commenters were concerned that this language may be interpreted as IV-D payment records could be made available to requestors not associated with the case who may want the information for purposes not related to child support.

In response to comments, we deleted paragraph (1) of § 303.21(d), which in the NPRM authorized disclosure of confidential information to the individual to whom the information pertains. To the extent that an individual is requesting information about himself/herself in the IV-D agency's files for a IV-D program purpose, the information may be

disclosed under paragraph (c), General rule. We also deleted under paragraph (e) Safeguards, that “safeguards shall prohibit disclosure to any committee or legislative body (Federal, State, or local) of any confidential information, unless authorized by the individual as specified in paragraph (d) of this section.” To the extent that an individual in a IV–D case submits a request to a legislator or legislative body concerning his or her IV–D case, the IV–D agency may disclose the information necessary for the response because the inquiry relates to the administration of the IV–D program and is authorized under paragraph (c).

We revised § 303.21(d)(2)(ii) and (iii) and relocated it to § 303.21(d)(1). Section 454A of the Act only permits the disclosure of information for non-IV–D purposes to State agencies of designated programs where the information is necessary to carry out a State agency function under that program. Therefore, we have relocated these disclosures to clarify that they are encompassed within this authority specified in § 303.21(d)(1). In paragraph (2), we restricted disclosure of information for income and eligibility verification purposes under sections 453A and 1137 of the Act to SDNH information.

We added language to § 303.21(e) that refers to family violence indicator requirements under § 307.11(f)(1)(x). Commenters thought we should add language regarding the family violence indicator which is an additional privacy safeguard for family violence victims.

We also changed § 307.13(a) of the NPRM by deleting paragraph (4). It referred to welfare-to-work, a grant program that no longer exists. We redesignated paragraph (a)(5) as paragraph (a)(4) and revised the language for clarity. As revised, it requires written policies that limit disclosure outside the IV–D program of National Directory of New Hire, Federal Case Registry and Internal Revenue Service (IRS) information from the computerized support enforcement system. The regulation sets forth the circumstances when information may be disclosed to IV–A, IV–B, and IV–E agencies and when IRS information may be disclosed. As revised, financial institution information cannot be shared outside the IV–D program. We made this change because of the language in section 469A(a) and (b) of the Act. These sections provide for non-liability for financial institutions when they disclose financial record information only for child support related purposes. Throughout the preamble and regulation we use “financial institution

information” to refer to information covered by section 469A(a) and (b) of the Act. This information includes Multistate Financial Data Matches (MSFIDM) and State Financial Institute Data Matches (State FIDM).

Some commenters found the charts confusing, especially Appendix A in Section I and Appendix A in Section 2. We reorganized the two previous charts into three charts: Appendix A, B, and C. In Appendix A we reordered the chart by displaying locate efforts first by person rather than by purpose. Appendix A illustrates authority for locating individuals through the State PLS. Appendix B illustrates authority for locating an individual sought in a child custody/visitation or parental kidnapping case. Appendix C illustrates authority for State IV–D agencies to release information to non-IV–D Federal, State, and Tribal Programs. These charts are included at the end of the preamble for illustrative purposes only.

Section II. A. State Parent Locator Service (Sections 302.35, 303.3, 303.20, and 303.70)

Section 302.35, State Parent Locator Service

The previous regulation at § 302.35(a) contained a State plan requirement that the IV–D program shall establish a State Parent Locator Service (PLS) using: (1) All relevant sources of information and records available in the State, and in other States as appropriate; and (2) the Federal PLS of the Department of Health and Human Services.

Paragraph (a) modifies the requirement for each State to “establish” a State PLS, and instead requires each State to “maintain” a State PLS “to provide locate information to authorized persons for authorized purposes.”

Section § 302.35(a)(1), covering IV–D agencies, cases and purposes, requires that the State PLS access “the Federal PLS and all relevant sources of information and records available in the State, and in other States as appropriate, for locating custodial parents, noncustodial parents, and children for IV–D purposes.” Paragraph (a)(2) addresses locate requests for authorized non-IV–D individuals and purposes. For purposes of this regulation, all requests under section 453(c)(3) of the Act are considered to be requests by non-IV–D individuals and purposes. This provision requires a IV–D program to access and release information authorized to be disclosed under section 453(a)(2) of the Act from “the Federal PLS and, in accordance with State law,

information from relevant in-state sources of information and records, as appropriate” to respond to locate requests from a non-IV–D entity or authorized individual specified in paragraph (c) and for authorized purposes specified in paragraph (d).

For non-IV–D requests, under paragraph (a)(2), the State PLS will not access IRS information or financial institution information, which is available only to IV–D agencies and to a limited extent to their agents, under Federal statute.

The previous regulation at paragraph (b) required that the IV–D agency must “establish a central State PLS office and also may designate additional IV–D offices within the State to submit requests to the Federal PLS.” The amendment to § 302.35(b) removes mention of a State PLS “office.” It also requires the IV–D program to “maintain” rather than “establish” a central State PLS.

The previous § 302.35(c)(1) through (5) language specified the authorized persons and entities from whom the State PLS shall accept requests for locate information. The amendments to paragraph (c) strengthen the process by which authorized requestors obtain locate information through the State PLS, specifically with respect to requests from a resident parent, legal guardian, attorney, or agent of a non-IV–A child.

Previously, § 302.35(c)(3) simply referred to the “resident parent, legal guardian, attorney, or agent of a child” in non-IV–A cases as authorized persons. The revised § 302.35(c)(3) makes it clear that the State PLS will accept locate requests from the resident parent, legal guardian, attorney or agent of a child who is not receiving assistance under title IV–A of the Act only if key requirements are met. The regulation requires the individual to: (i) Attest that the request is being made to obtain information on, or to facilitate the discovery of, any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations; (ii) attest that any information obtained through the Federal or State PLS will be used solely for these purposes and otherwise treated as confidential; (iii) provide evidence that the requestor is the parent, legal guardian, attorney, or agent of a child not receiving assistance under title IV–A of the Act, and if an agent of such a child, evidence of a valid contract that meets any requirements in State law or written policy for acting as an agent, and if a parent, attestation that he or she

is the resident parent; and (iv) pay the Federal PLS fee required under section 453(e)(2) of the Act and § 303.70(f)(2)(i), if the State does not pay the fee itself. The regulation also specifies that the State may charge a fee to cover its costs of processing these requests. A State's fee must be as close to actual costs as possible, so as not to discourage requests to use the Federal PLS. See §§ 304.23(e) and 304.50(a). Paragraph (c)(4) simplifies the language regarding the use of the Federal PLS for parental kidnapping, child custody, or visitation cases. Paragraph (c)(5) rewords the previous language allowing locate requests from State title IV-B and title IV-E agencies.

Previous paragraph (d) is redesignated as paragraph (e), as discussed below. A new paragraph (d) is added to specify the authorized purposes for which the State PLS and the Federal PLS may be used and the locate information that may be released for these purposes. Paragraph (d)(1) covers the purposes of establishing parentage and establishing, modifying, or enforcing child support. It also covers related authorized releases of information to locate an individual who has or may have parental rights with respect to the child. It pertains to IV-D and non-IV-D authorized persons and programs, including title IV-B and IV-E agencies. For IV-B/IV-E cases that are non-IV-D and other cases under (d)(1), wage information is authorized and the State PLS may provide asset and/or debt information from the Federal PLS. Paragraph (d)(2) covers the purposes of enforcing a State law with respect to the unlawful taking or restraint of a child or for making or enforcing child custody or visitation determination and the related authorized releases of information.

Paragraph (e), requires privacy safeguards for Federal PLS information only. The amendment specifies at paragraphs (e)(1) and (2) that, subject to the requirements of this section and the privacy safeguards required under section 454(26) of the Act and the family violence indicators under section 307.11(f)(1)(x), the State PLS shall disclose "Federal PLS information" described in sections 453 and 463 of the Act and "information from in-state locate." An Appendix A has been added at the end of the preamble to show the linkages between authorizing statute, authorized purpose, authorized person or program, and authorized information.

Section 303.3, Location of Noncustodial Parents in IV-D Cases

Under the final rule, § 303.3 is re-titled "Location of noncustodial parents in IV-D cases." Under paragraph (a),

location is defined to mean "information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a IV-D case."

The amendments to paragraph (b) clarify which location requirements apply to IV-D cases. Paragraph 303.3(b) requires the IV-D program to attempt to locate a noncustodial parent in a IV-D case or his or her sources of income and/or assets when location is needed to take necessary action. Paragraphs (b)(1) through (5) provide an extensive list of location sources that as discussed below are unchanged for the most part from the previous regulation.

Paragraph (b)(3) no longer includes the words "including transmitting appropriate cases to the Federal PLS" because States now submit cases to the Federal Case Registry for automatic matching with the National Directory of New Hires for locate purposes.

The previous regulation at paragraph (b)(4) required the IV-D program to "Refer appropriate cases to the IV-D program of any other State, in accordance with the requirements of § 303.7 of this part." The amendment inserts the word "IV-D" before the word "cases" to clarify that the IV-D program of State 1 may refer only IV-D cases to the IV-D program of State 2.

New paragraph (b)(6) draws a direct link between the IV-D program's duty to locate noncustodial parents and the duty to safeguard information. The language incorporates by reference both the existing statutory requirement at sections 454(26) and 454A(d) and (f) of the Act and the regulatory requirements at §§ 303.21 and 307.13.

Current paragraph (c) regarding diligent efforts to serve process is unchanged, but is republished to aid the reader in reviewing this section.

Section 303.20, Minimum Organizational and Staffing Requirements

The regulation at § 303.20 describes the minimum organizational and staffing requirements for the IV-D program. Paragraph (b) of this section requires an organizational structure and staff sufficient to fulfill specified State level functions, including, in paragraph (b)(7), "operation of the State Parent Locator Service as required under §§ 302.35, 303.3, and 303.70 of this chapter."

Section 303.21, Safeguarding and Disclosure of Confidential Information

This new regulation is discussed in Section II.B.

Section 303.70, Procedures for Submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (Federal PLS)

With passage of legislation that established the National Directory of New Hires (NDNH) in 1996 and established the Federal Case Registry (FCR) in 1998, the Federal PLS became highly automated. The language in this section has been revised to indicate that the Federal PLS reflects the automated matching and return of information to IV-D programs in IV-D cases from the Federal PLS's Federal Case Registry and National Directory of New Hires. For example, while requests for Federal PLS information are accepted, State IV-D programs no longer "request" Federal PLS information and we replaced the word "requests" with "submittals" wherever it appears. We eliminated the word "office" as in State PLS "office" to demonstrate that this work is automated.

A new paragraph (a) has been inserted: The State agency will have procedures for submitting to the State PLS or the Federal PLS for the purpose of locating parents, putative fathers, or children for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations; or for the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child; or making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act. The previous paragraph (a) has been redesignated as paragraph (b) and the previous paragraph (b) has been redesignated as paragraph (c).

In addition, in newly designated paragraph (d) all submittals shall contain the following information: (1) The parent's or putative father's name; (2) the parent's or putative father's Social Security Number (SSN). If the SSN is unknown the IV-D program must make reasonable efforts to ascertain the individual's SSN before making a submittal to the Federal PLS; and (3) any other information prescribed by the Office.

The previous regulation at § 303.70(d) has been redesignated as paragraph (e). It requires that annually the IV-D director attest to compliance with the listed requirements. Paragraph (e)(1)(i) specifies that the IV-D program will "obtain" rather than "request"

information. A new paragraph (e)(1)(ii) clarifies that the IV-D program will only provide information to authorized persons as specified in sections 453(c) and 463(d) of the Act and § 302.35.

Paragraph (e)(2) is new and requires that, in the case of a submittal made on behalf of a resident parent, legal guardian, attorney or agent of a child not receiving assistance under title IV-A, the IV-D program must verify that the requestor has complied with the provisions of § 302.35.

Paragraph (e)(3), formerly paragraph (d)(2), has been changed to specify that the IV-D program shall treat information obtained through the Federal PLS as confidential and shall safeguard the information in accordance with statutory requirements at § 303.21.

Paragraph (f) has minor changes. In (f)(1) the statutory references have been accompanied by explanatory phrases for better understanding and in (f)(4)(ii) the word "paid" has been changed to "transmitted" to reflect the change in payment methodology due to technology advances.

II.B. Safeguarding and Disclosure of Confidential Information (Sections 303.21 and 307.13)

Section 303.21, Safeguarding and Disclosure of Confidential Information

The regulation consists of six paragraphs: (a) Definitions; (b) Scope; (c) General rule; (d) Authorized disclosures; (e) Safeguards; and (f) Penalties for unauthorized disclosure.

Section 303.21(a) Definitions

The regulation begins with a definition of the term "confidential information." Paragraph (a)(1) provides that "confidential information" means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including, but not limited, to the individual's Social Security Number, residential and mailing addresses, employment information, and financial information. Paragraph (a)(2) defines independent verification to mean the process of acquiring and confirming confidential information through the use of a second source. The information from the second source, which verifies the information about NDNH or FCR data, may be released to those authorized to inspect and use the information as authorized under the regulations or the Act.

Section 303.21(b) Scope

Paragraph (b) reads: "The requirements of this section apply to the

IV-D agency, any other State or local agency or official to whom the IV-D agency delegates any of the functions of the IV-D program, any official with whom a cooperative agreement as described in § 302.34 has been entered into, and any person or private agency from whom the IV-D agency has purchased services pursuant to § 304.22."

Section 303.21(c) General Rule

Paragraph (c) presents a general rule which states that "[e]xcept as authorized by the Act and implementing regulations, an entity described in paragraph (b) of this section may not disclose any confidential information, obtained in connection with the performance of IV-D functions, outside of the administration of the IV-D program."

Section 303.21(d) Authorized Disclosures

Paragraph (d) sets forth the authorized disclosures that are exceptions to the general rule prohibiting disclosure of confidential information. Under paragraph (d)(1), upon request, the IV-D agency may, to the extent that it does not interfere with the IV-D agency meeting its own obligations, disclose information for certain limited purposes. Under paragraph (d)(1) information may be shared for administration of programs under titles IV (TANF, child and family services, and foster care and adoption programs), XIX (Medicaid program), and XXI (State Children's Health Insurance [SCHIP] program) of the Act. The regulation also includes disclosure to Tribal programs authorized under title IV-A and IV-D of the Act.

Paragraph (d)(2) (previously paragraph (d)(2)(iv)) permits the release of SDNH information to programs designated pursuant to sections 453A and 1137 of the Act for income and eligibility verification purposes.

Paragraph (d)(3) requires that authorized disclosures under § 303.21(d)(1) and (2) shall not include confidential information from the National Directory of New Hires, the Federal Case Registry, or Internal Revenue Service (IRS), unless authorized under § 307.13 or unless the information has been independently verified. A State may independently verify the NDNH or the FCR information through another source, in which case the information from the second source may be used. Independent verification is the process of acquiring and confirming confidential information through the use of a second source. The information from the second source may

be released to those authorized to inspect and use the information. For example, if a State determines that an address is correct through a postal verification the State can share the information it acquired from the second source (the Post Office). No IRS information can be disclosed outside of the administration of the IV-D program, unless specifically authorized in Federal statute or independently verified. IRS information is restricted as specified in the Internal Revenue Code (IRC). No financial institution information may be disclosed outside the IV-D program. The restriction on release of financial institution information outside the IV-D program is due to the liability protection given to financial institutions for release of information to the Federal PLS or to the State IV-D programs for child support purposes as indicated in section 466(a)(17)(C) of the Act and limitations in section 469A of the Act, regarding the use of such information.

Section 303.21(e) Safeguards

Paragraph (e) provides that "In addition to, and not in lieu of, the safeguards described in § 307.13 of this chapter, which governs computerized support enforcement systems, the IV-D agency shall establish appropriate safeguards to comply with the provisions of this section." These safeguards shall also include prohibitions against the release of information when the State has reasonable evidence of domestic violence or child abuse against a party or a child and that the disclosure of such information could be harmful to the party or the child, as required by § 454(26) of the Act, and shall include use of the family violence indicator required under § 307.11(f)(1)(x) of this chapter.

Section 303.21(f) Penalties for Unauthorized Disclosure

Paragraph (f) provides that "[a]ny disclosure or use of confidential information in violation of the Act and implementing regulations remains subject to any State and Federal statutes that impose legal sanctions for such disclosure."

Section 307.13 Security and Confidentiality for Computerized Support Enforcement Systems in Operation After October 1, 1997

Section 307.13 addresses security and confidentiality of computerized systems. Paragraph (a), (a)(1), and (a)(2) are unchanged. Paragraph (a) addresses information integrity and security. Automated systems must have safeguards protecting the integrity,

accuracy, completeness of, access to, and use of data in the computerized support enforcement system. These safeguards shall include written policies concerning access to data by IV-D program personnel, and the sharing of data with other persons to: (a)(1) Permit access to and use of data to the extent necessary to carry out the State IV-D program under this chapter and (a)(2) specify the data which may be used for particular IV-D program purposes, and the personnel permitted access to such data.

Paragraph (a)(3) permits the IV-D agency to exchange data from its computerized support enforcement system with agencies administering other programs under titles IV, XIX, and XXI of the Act to the extent necessary to carry out State and Tribal agency responsibilities under such programs in accordance with section 454A(f)(3) of the Act; and to the extent that it does not interfere with the IV-D agency meeting its own obligations.

Paragraph (a)(4) as written in the NPRM has been deleted. It referred to welfare-to-work, a grant program that no longer exists. The present paragraph (a)(4) which previously was paragraph (a)(5) has been rewritten for clarity and requires written policies that generally prohibit disclosure outside the IV-D program of National Directory of New Hire or Federal Case Registry information, or IRS information from the computerized support enforcement system, to information that has been independently verified. IV-A, IV-B, and IV-E agencies are authorized under various subsections of section 453 of the Act to receive NDNH and FCR information from the Federal PLS for certain specified purposes. Since these agencies are authorized to have this information, we are permitting the IV-D agency to disclose the NDNH or FCR information from the IV-D computerized support enforcement system directly to the IV-A, IV-B, or IV-E agency if it is being requested for the purpose authorized under section 453 of the Act. For IV-B and IV-E programs this includes establishing paternity or parental rights with respect to a child.

III. Section-by-Section Discussion of Comments

This section provides a detailed discussion of comments received on the proposed rule, and describes changes made to the proposed rule. We refer generally to actions of the "Department" pursuant to the rule. The rule itself refers to actions of the "Secretary" but the day-to-day activities of the Secretary's functions have been

delegated and are exercised by other Department officials, primarily in the Administration for Children and Families. "Office" refers to the Federal Office of Child Support Enforcement (OCSE). We received approximately 200 comments from 20 IV-D programs (including 1 tribe), 3 organizations, and 1 private citizen. Many comments were for points of clarification rather than stating support or opposition to the proposed regulation. For example, many comments indicated a lack of awareness on existing longtime requirements such as the statutory restrictions of access to Federal PLS data on IV-D systems for certain unauthorized persons and programs.

General Comments

There were various comments that are not attributable to specific sections of the regulation and are discussed below.

1. *Comment:* Two commenters ask that once the final rule is imposed, OCSE provide States with reasonable time to implement these regulations, which may include changes to State legislation and automated systems. Another commenter believes the Office should make clear what the effective date is of this regulation as was done with some regulations while implementing PRWORA.

Response: This rule is effective 6 months from the date of publication.

2. *Comment:* One commenter requested that the Secretary insert language from sections of the Social Security Act so the reader does not have to look up sections of the Act.

Response: To do so would significantly increase the length of regulatory language. We have attempted to ensure there are no cross-references without a brief summary of the content of those statutory sections.

3. *Comment:* This regulation possibly sets up competing public interests. For example: Pitting the confidentiality regulation versus the openness of the judicial system and court files; the regulation versus the State's public policy of open government (Sunshine laws); the regulation versus the State Constitution's provision for access to public records and meetings.

Response: These regulations govern disclosure of IV-D data under sections 454(26), 453, and 454A of the Act. A wide array of personal information is available to IV-D agencies and it is imperative that the Federal and State governments protect these data to the greatest extent possible and use them only where necessary for authorized purposes. Child support records, including Federal PLS information, contain information that poses a high

risk of identity theft, and thus should be treated with special care.

4. *Comment:* One commenter asks why this rule includes proposed additional restrictions on sharing certain Federal data with other public agencies in one part of the rule while proposing granting broad access to State data to private entities in another part. According to the commenter, use of data disclosed to other State agencies can be easily monitored while private entities are less accountable, harder to monitor, and more likely to use data for unauthorized purposes.

Response: This regulation is determined in large part by explicit Federal statute. Section 454(8) of the Act says that "the agency administering the (State) plan will establish a service to locate parents * * * and shall, subject to the privacy safeguards required under paragraph (26), disclose only the information described in sections 453 (Federal PLS) and 463 (Use of the Federal PLS in connection with enforcement of determination of child custody and in cases of parental kidnapping) to the authorized persons specified in such sections for the purposes specified in such sections." With respect to private entities the regulation at § 302.35(c)(3) requires an attestation process that must be used by the resident parent, legal guardian, attorney, or agent of a child who is not receiving assistance under title IV-A of the Act when obtaining information on or to facilitate the discovery of any individual in accordance with section 453(a)(2) of the Act.

5. *Comment:* In 42 U.S.C. 654(26), Congress allowed States to have flexibility in crafting confidentiality requirements. States may find it difficult to follow a regulatory "one size fits all" approach and make changes to the law in matters over which child support agencies have no authority.

Response: The regulation reflects statutory requirements as stated in section 454(26) of the Act that a child support State Plan must provide that States have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties involved. It also reflects other statutory restrictions on disclosure in sections 453 and 454A of the Act.

6. *Comment:* If the Federal Bureau of Investigations (FBI) was called to investigate possible sources of threats to a IV-D caseworker and the FBI demanded the names and contact information for every person on the IV-D employee's caseload, would the IV-D agency be justified in sharing this

information with the FBI? Does protecting a IV-D worker from potential harm fall under the provisions of a IV-D purpose?

Response: The IV-D agency could share the information because the investigation relates to the administration of the IV-D program.

7. *Comment:* Two commenters say that OCSE should reaffirm its commitment to additional privacy safeguards for family violence victims by incorporating references to the family violence indicator in the rule.

Response: We agree and have added language to § 303.21(e) that provides explicit reference to required family violence indicators for potential domestic violence or child abuse.

8. *Comment:* Two commenters are concerned that when enforcing a referral from a Tribal IV-D agency located in that State or in another State, a State would be unable to provide information about whether a Federal tax refund offset occurred and the amount collected. This would make it impossible for the Tribal IV-D agency to correctly adjust the arrearage to give the noncustodial parent credit for the tax refund offset. Another commenter believes the Internal Revenue Services (IRS) statute at 26 U.S.C. 6103 sufficiently provides for confidentiality limitations for States to disclose information to Tribes and States. Tribal IV-D agencies do not need another regulation to further burden negotiations with State IV-D agencies.

Response: Policy Interpretation Question (PIQ) 07-02 addresses this. See <http://www.acf.dhhs.gov/programs/cse/pol/PIQ/2007/piq-07-02.htm>. A State may submit arrearages owed in Tribal IV-D cases for Federal tax refund offset if the following conditions are met:

1. The approved Tribal IV-D plan or plan amendment indicates that the Tribe has entered into a cooperative agreement with the State under § 309.60(b) and (c) for the State to submit arrearages owed in Tribal IV-D cases for Federal tax refund offset. The Tribe must submit as part of its Tribal IV-D plan or plan amendment copies of any such agreement. The regulations governing Tribal IV-D programs at § 309.35(d) require that after approval of the original Tribal IV-D program application, all relevant changes required by new Federal statutes, rules, regulations, and Department interpretations are required to be submitted so that the Secretary may determine whether the plan continues to meet Federal requirements and policies.

2. The cooperative agreement between the Tribe and State includes a statement that the Tribal IV-D program will comply with all safeguarding requirements with respect to Federal tax refund offset in accordance with § 309.80, section 454(26) of the Act and the Internal Revenue Code 26 U.S.C. 6103, which prohibits the release of IRS information outside of the IV-D program.

3. The Tribal IV-D plan provides evidence that the Tribe's application for IV-D services under § 309.65(a)(2) includes a statement that the applicant is applying for State IV-D services for purposes of submitting arrearages for Federal tax refund offset.

9. *Comment:* One commenter says there must be an easy-to-use procedure for individuals misidentified by child support database programs to correct agency records and also requests that this rule provide for a system to flag errors where files are "mixed."

Response: If an individual believes he or she has been misidentified by the IV-D system, he or she should contact the appropriate IV-D office. The IV-D program should fix the error as soon as possible. These regulations do not go into the details of step-by-step State case processing that would make such a proposal appropriate.

10. *Comment:* One commenter requests that language in the preamble to the proposed rule be incorporated into the actual regulation. Page 60044, column 3 says "programs receiving confidential information may use the information only for the purpose for which it was disclosed and may not redisclose the information." However, this restriction on redisclosure is not in the text of the proposed rule.

Response: This regulation is for title IV-D programs and we cannot regulate other programs once information is disclosed. However, State IV-D programs must make clear to those authorized to receive child support data, the limited purpose for which information may be used. Improper use or disclosure would be governed by State and Federal statutes that impose penalties for such disclosure.

11. *Comment:* One commenter says there is no legislative history that Congress contemplated expanding access to State databases and records beyond the IV-D program or beyond what is otherwise permitted by State law.

Response: The provisions relating to the State PLS implement section 454(8) of the Act, 42 U.S.C. 654(8), which requires each State plan for child support enforcement to provide that the State will: (1) Establish a service to

locate parents utilizing all sources of information and available records including the Federal PLS; and (2) be subject to the privacy safeguards in section 454(26) of the Act, 42 U.S.C. 654(26) and disclose only the information described in sections 453 and 463 of the Act to the authorized persons specified in those sections. This language authorizes a system of disclosure of State data based on the system in place for the Federal PLS. We have revised the regulation to recognize the possibility of more restricted access to State data by incorporating the language "in accordance with State law."

12. *Comment:* One commenter is concerned that States are not informing individuals when disclosure of their Social Security Number (SSN) to another source will occur and by collecting noncustodial parents' SSNs from a third party source.

Response: States are required to comply with section 7(b) of the Privacy Act and its disclosure requirements (5 U.S.C. 552a). In all IV-D cases, the Privacy Act requires a Federal, State, or local government agency to provide certain information to the individual from whom a SSN is requested by the agency.

13. *Comment:* One commenter says that notice and due process are required when States use, release, or enter data into State PLS and Federal PLS computer interface records on individuals who do not need to be located for purposes of child support.

Response: Access to personal data covered by the regulation is authorized as explicitly provided for in Federal title IV-D statute.

Section 302.35, State Parent Locator Service

1. *Comment:* Two commenters have major concerns with this section. One would like to know the reason for these amendments, opposes the requirement that the State PLS provide information to requestors with regard to in-state sources, and strongly recommends that references to access and release of in-state State PLS information be deleted from the proposed regulation. The other commenter is concerned with this section and believes the regulation erodes the capability of the child support program to safeguard confidential information. The regulation creates a presumption, not supported by law, that non-IV-D entities may access in-state resources.

Response: A State/Federal workgroup, established after the passage of the Personal Responsibility and Work Opportunity Reconciliation Act,

recommended that these regulations be promulgated in order to clarify the statutory limitations of sharing data. In response to comments we have revised the regulation to provide State searches only to the extent authorized by State law. With regard to in-state sources, section 454(8) of the Act says a State shall be subject to the privacy safeguards in section 454(26) of the Act, 42 U.S.C. 654(26).

2. Comment: One commenter asks why the regulation does not clearly tie authorized persons to the authorized purposes for which they may receive locate information, addressing persons and in separate subsections.

Response: We disagree. The authorized persons and purposes are clearly stated in the regulation and are identical to those of the Federal PLS. Appendix A displays this set of authorities.

3. Comment: One commenter would like to eliminate the reference in Appendix A that says "No automated system" for Authorized Purpose B, C, and D.

Response: This Appendix and others have been revised and/or added. Any limitation of disclosure of automated systems data is required by section 454A of the Act.

4. Comment: One commenter proposes adding a section to this provision that requires maintenance of an audit log to deter employee misuse of databases. Audit logs hold individuals responsible for their use of personal information databases and would record who accesses personal information, and the purpose for which it was accessed.

Response: Federal requirements do not prescribe this level of mandate on State responsibilities. It is up to the State to implement necessary and appropriate methods to ensure that access and disclosure is for proper purposes and only to authorized persons. States have discretion, however, to implement similar audit procedures.

5. Comment: One commenter recommends moving § 302.35(b) closer to § 302.35(a) to clarify that the Federal PLS is considered part of the State PLS for IV-D cases and for authorized non-IV-D purposes under this section.

Response: The Federal PLS is not part of the State PLS. Subparagraph (b) is based on the requirement that requests for Federal PLS data must flow through the State PLS.

6. Comment: One commenter asks for confirmation that together §§ 302.35(a)(1) and (2) and 302.35(c) limit the use of the State PLS for IV-D cases to only IV-D purposes but permits

the use of the State PLS for non-IV-D individuals or non-IV-D cases for the authorized non-IV-D purposes.

Response: Section 302.35(a)(1) and (2) limit the use of the State PLS for IV-D cases to only IV-D purposes but permits the use of SPLS for non-IV-D individuals or non-IV-D cases for the authorized non-IV-D purposes.

7. Comment: One commenter suggests that the title of paragraph (1) be changed to "For IV-D cases and IV-D purposes" for clarity.

Response: For clarity, we have revised the title of paragraphs (1) and (2) to distinguish between IV-D requests and non-IV-D requests.

8. Comment: One commenter asks that the Office clarify why locate information, restricted for custody and visitation purposes to the most recent address and place of employment, requires such strict confidentiality where there is not a family violence indicator or other information giving rise to safety concerns for the parties. The address of a litigant to a court proceeding is considered public information and necessary for the case to proceed.

Response: The restriction is statutory. Section 463(c) of the Act [Use of Federal PLS in connection with the enforcement or determination of child custody and in cases of parental kidnapping of a child] contains the restriction "Only information as to the most recent address and place of employment of any parent or child shall be provided under this section."

9. Comment: In addition to using the State PLS for locating either parent for IV-D purposes, one commenter asks that the agency also be able to use the State PLS for locating the child for IV-D purposes.

Response: IV-D agencies already have that authority with the Federal PLS. Section 453(a)(2)(iii), which states "to whom such an obligation is owed" includes the child. However, in response to this comment, we have added "children" to § 302.35(a)(1).

10. Comment: One commenter points out what he or she believes to be a mistake: "Child" is included in Appendix A to § 302.35 under "Authorized Purpose" but is not included in the preamble or in the regulation. Another commenter suggests that this section of the regulation be revised by deleting the words "noncustodial parents" and inserting "a parent or child."

Response: We agree and have included reference to custodial parents, noncustodial parents and children in both the preamble and the regulation at § 302.35.

11. Comment: One commenter suggests substituting the word "parties" for "parents" since the IV-D or a cooperating agency may be enforcing a support order in a IV-D case for a custodial party other than a parent.

Response: The statute uses the term parent, although we recognize there may be instances where children are in the custodial care of individuals other than their parents.

12. Comment: One commenter points out that the reference to § 303.3 in the second sentence of § 302.35(a)(1) creates confusion because § 303.3 only addresses locate requirements for noncustodial parents in IV-D cases. The commenter assumes this is not the intent of the proposed regulation and, to avoid confusion, recommends removing the second sentence of § 302.35(a)(1) because the first sentence clearly conveys the intent of the subsection.

Response: We agree and have removed the reference to § 303.3, which only applies to location of noncustodial parents in IV-D cases.

13. Comment: Several commenters had comments relating to the use of the State Disbursement Unit in non-IV-D case situations. Since it is a IV-D function to disburse support to custodial parents in non-IV-D cases subject to income withholding, can a IV-D program use the State PLS or Federal PLS to locate a non-IV-D custodial parent for purposes of disbursing child support?

Response: Yes, this would be a legitimate use of locate sources for IV-D agencies seeking to locate such custodial parents in non-IV-D cases subject to income withholding.

14. Comment: One commenter points out a contradiction in the regulation regarding the use of in-state locate sources. On the one hand, § 302.35(a)(2) provides a mechanism for States to "opt out" of using in-state locate sources in response to a non-IV-D request if such use is "prohibited by State law or written policy." Yet § 302.35(e) states "the State PLS shall disclose * * * information from in-state locate sources as required by this section and described in § 303.3(b)(1)." This latter language suggests that expanded access is required regardless of State law or written policy, which is contrary to the intent expressed in the preamble to the proposed rule, as well as the intent of the statute.

Response: We agree. We have revised the language to provide in-state searches in accordance with State law.

15. Comment: One commenter requests that the following terms be eliminated in the final rule: Non-IV-D individual(s); non-IV-D case(s); non-IV-

D request(s) and be replaced with “non-IV-D purpose” and another commenter asked that the Office provide a definition of non-IV-D purpose.

Response: Reference to all four terms is appropriate each time a specific term is used in the regulation. Non-IV-D purpose is addressed in paragraph (d): the State PLS shall obtain location information under this section only for the purposes specified in paragraphs (d)(1) and (d)(2) of § 302.35. Section 453 of the Act provides statutory authority for using the Federal PLS for the purpose of locating any individual who has or may have parental rights with respect to a child, enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or making or enforcing a child custody or visitation determination.

16. Comment: One commenter seeks confirmation that taken together, these sections mean that once a State establishes policy to define State PLS sources of information, any other data contained in the State’s computerized support enforcement system may not be released under this section, regardless of the source of that information.

Response: The State’s computerized support enforcement system is not a source of information for the State PLS. Access to any data on the statewide automated system is limited in sections 454A(d) and (f) of the Act and 45 CFR part 307. Independently verified information may be released to those authorized to access and use the information. For example, if a State determines that an address is correct through a postal verification the State can share the information it acquired from the second source (the Post Office).

17. Comment: One commenter strongly suggests that this proposed regulation be modified to make it clear that it is the Federal OCSE’s responsibility to exclude IRS information, or MSFIDM information when in receipt of a non-IV-D request for FPLS information.

Response: If the State codes its requests correctly, (e.g., pk, ad, etc.), OCSE only returns appropriate information for that request. Please see the FCR Interface Guidance Document (Chart 6–14) <http://www.acf.hhs.gov/programs/cse/newhire/library/fcr/fcr.htm>. However, the State may have such information in its files and the State bears the responsibility to assure that only authorized information is released in response to a request.

18. Comment: One commenter strongly suggests that there be a simple system set up for OCSE to receive formal requests from States (preferably online with a predefined outgoing and

incoming data format) that would ensure that all requests to the Federal PLS are properly documented and the authorized information would be returned in a pre-defined format suitable to direct redisclosure to authorized requestors. The States’ only duty would be to submit and return requests for information on behalf of non-IV-D authorized requestors. This would greatly enhance the security and confidentiality of this Federal requirement.

Response: The FCR Interface Guidance Document, mentioned above, provides this service. For example, a Foster Care case locate-only code provides only authorized information but a request with a IV-D code provides much more data because the request is on a IV-D case.

19. Comment: One commenter believes a better approach for this section would be for those individuals who desire child support services under the title IV-D program, including location services, to apply for services.

Response: The Federal statute at sections 453 and 454(8) of the Act require States to disclose certain information to authorized non-IV-D persons for authorized purposes. Such purposes includes access for locate purposes. There is no requirement that individuals apply for IV-D services to receive requested information.

20. Comment: One State does not support requiring the State PLS to release information gathered from in-state sources to non-IV-D individuals unless there is a State law or policy prohibiting such a release as provided in § 302.35(a)(2)(i) and believes this requirement exceeds the authority granted in 42 U.S.C. 653(a)(2) which pertains only to Federal PLS information. Instead, the State favors a provision that authorizes the State PLS to release in-state source information only if permitted under State law or regulation.

Response: We accept the commenter’s position and have revised the regulation accordingly.

21. Comment: Two commenters would like recognized that the preamble claims States have interpreted current law “to permit use of State resources for non-IV-D location purposes, including location for custody and visitation purposes” and notes that while a handful of States may permit broad access to State databases by private entities, these practices are not widespread and are not based on a common or settled interpretation of Federal law. Because some States have chosen to disclose State PLS and Federal PLS information to non-IV-D

requestors should not be the basis of requiring all States to do so.

Response: See response to comment 20.

22. Comment: A commenter says that if a State wishes to disclose State PLS data, it should have to have a written law or policy describing what it will disclose, to whom it will disclose it, and under what circumstances. In the absence of such a policy, State PLS data should not be disclosed to non-IV-D entities.

Response: It is up to the State to set standards for disclosure.

23. Comment: One commenter believes the final regulation should acknowledge that there may be other State laws governing the disclosure of personal data to nongovernmental entities if any mention of State duty to provide State PLS data is retained.

Response: We believe the revised language “in accordance with State law” takes this into account.

24. Comment: One commenter would like clarification on the reason for the restriction that prevents the State PLS from searching the statewide computer system or providing a non-IV-D requestor with any information contained in the system. The commenter asks for the rationale behind this restriction and an explanation on how OCSE envisions compliance by States whose non-IV-D cases are part of their statewide computer system.

Response: Access to information in the IV-D automated system is strictly limited by Federal statute. Section 454A of the Act restricts disclosure of information in a State IV-D automated system to purposes related to the administration of the IV-D program so non-IV-D requestors cannot get such information.

25. Comment: One commenter says that the language referring to the support enforcement computer system (along with Appendix A) can be read to prohibit the release of information contained in the system even where that information was derived from non-IRS or non-MSFIDM sources and asks whether this was the intent.

Response: Yes, this is the intent. The Federal statute at sections 454A(d) and (f) clearly restricts access to and disclosure of State automated child support system data.

26. Comment: One commenter requests further explanation or clarification regarding the prohibition against releasing information from automated support enforcement systems to fulfill non-IV-D requests. Clarification is needed because any information received in the course of IV-D program business is typically

registered in such system; therefore, exactly what may be legally disclosed under § 302.35(a)(2)(ii) is unclear.

Response: Section 454A of the Act does not authorize access to State systems for non-IV-D purposes. Therefore, a State may only seek or locate information in a non-IV-D case directly from the State PLS or from the Federal PLS and disclose that data to a non-IV-D requestor. (Also see # 27, below.)

27. *Comment:* One commenter seeks clarification that the idea of § 302.35(a)(2)(ii) is that if a State receives a non-IV-D request, it may not look to any information “existing” on its system but rather must conduct State PLS and Federal PLS searches for information and only the information resulting from those searches could be released, as authorized.

Response: Yes, if a State receives a non-IV-D request, it may not look to any information “existing” in its system but rather must conduct State PLS and Federal PLS searches for information and only the information resulting from those searches can be released.

28. *Comment:* One commenter notes that § 302.35(c)(3) indicates that the State PLS may use some sources of data for non-IV-D location requests. However, it is noted in other parts that the State PLS shall not release information from the computerized support enforcement system. Many of the location sources the State agency uses feed into, and become part of, the computerized support enforcement system. Is the regulation forbidding the use of the CSE system to access otherwise permissible State sources of information?

Response: The regulation prohibits release of information residing on the State’s computerized support enforcement system, unless explicitly authorized. States may only share information on their automated system with authorized entities under 45 CFR Part 307. The State PLS may use the automated system to seek information from other sources as part of its location efforts in IV-D cases.

29. *Comment:* One commenter proposes new language for § 302.35(a)(2)(ii) “* * * IRS information or financial institution data match information relating to a financial account * * *” Incorporating this language would allow other information (such as address information) from MSFIDM to be released pursuant to a non-IV-D request.

Response: We are not incorporating the proposed change because of the need to safeguard all data received from a financial institution data match.

30. *Comment:* One commenter wants IV-B/IV-E agencies to be able to view limited, address-related data from other States’ IRS and financial institutions if such information could assist in locating the parent or person who could be a child’s parent and is otherwise not available in any other system.

Response: There is no authority under title IV-D of the Act or the Internal Revenue Service Code to allow this.

31. *Comment:* One commenter disagrees with prohibiting the State PLS in non-IV-D requests from disclosing information from the computerized support system because 42 U.S.C. 654(8) mandates that States use “all sources of information and available records” to locate parents regardless of whether they are involved in a IV-D case. The State could not defend such a policy to its judges and asks why such a prohibition in this rule is necessary.

Response: A State’s defense would be that Federal law prohibits such disclosure. Section 454A(f) of the Act specially governs data in IV-D automated systems and strictly limits disclosure.

32. *Comment:* One commenter asks what is the statutory basis for prohibiting disclosure of MSFIDM information for all non-IV-D requests. Because Federal statute limits use of financial record information from a financial institution “only for the purpose of * * * establishing, modifying or enforcing a child support obligation”, it appears FIDM information could be used for both IV-D and non-IV-D child support purposes.

Response: IV-D programs have statutory responsibility to safeguard confidential information not specifically authorized for release under section 453 of the Act. The IV-D program has broad access to certain data of all sorts from myriad sources. We believe it is essential to strictly limit access to data. Section 469A of the Act only provides for nonliability for financial institutions for disclosures to a State Child Support Enforcement agency or to the Federal PLS for purposes of section 466(a)(17) of the Act. The statute provides that the information be used only for IV-D purposes.

33. *Comment:* One commenter supports while another seeks clarification that § 302.35(a)(2)(ii) prohibits release of information from the State’s computerized support enforcement system even if that information is obtained from non-IRS or non-MSFIDM sources.

Response: States may not release any information in a State’s IV-D automated system except to specifically authorized requestors and for purposes related to

the administration of the IV-D program. Non-IV-D access is not authorized under section 454A of the Act. See § 307.13.

34. *Comment:* One commenter says that because States can not transmit non-IV-D requests to another State, an authorized requestor would be required to make multiple requests.

Response: This is correct. However, an authorized requestor can obtain certain information from the Federal PLS which may contain some of the State data, namely the employment data.

35. *Comment:* One commenter notes that while § 302.35(a)(2)(iii) specifies that for non-IV-D location requests, the IV-D program need not make subsequent location attempts if a location attempt fails, the preamble discussion says that a relocation attempt would be required if a requestor demonstrates that there is reason to believe new information exists. The proposed rule should clearly state that a relocation attempt is a requirement in this circumstance, if that is the intent.

Response: We have changed the language to clarify that no subsequent attempt to locate is necessary unless a new request is submitted.

36. *Comment:* One commenter asks under what circumstance the State PLS can provide Federal PLS with information.

Response: The State IV-D program is required to provide State Directory of New Hires and Federal Case Registry information. In addition, under section 453(e), the Federal PLS may seek information from any of the “departments, agencies, or instrumentalities of the United States or of any State.”

37. *Comment:* Child welfare staff in one State request a broader interpretation of § 302.35(a)(2)(iii), whereas, in order to facilitate the administration of programs under titles IV-B or IV-E, State PLS and Federal PLS locate attempts should occur at the same frequency as for IV-D programs (quarterly, at a minimum, or when new information leads are received).

Response: State IV-D agencies are not required to repeat locate results for non-IV-D entities unless a new request is submitted. However, States are free to establish the extent and frequency of authorized IV-B or IV-E locate requests.

38. *Comment:* One commenter believes that because § 302.35(a)(2)(iv) prohibits making State PLS requests separate from Federal PLS requests in non-IV-D cases, there is no need to develop a separate standard for the State PLS. Another commenter requests clarification that even if it can get the

requested information from State sources, the State must use the Federal PLS. If so, why would that be necessary?

Response: Based on comments received and the desire to allow States to retain the flexibility to conduct either State PLS or Federal PLS searches (or both) we have removed § 302.35(a)(2)(iv) in the final rule. If a State successfully uses State PLS sources and locates the individual sought, there may be no need to submit a request to the Federal PLS. However, if the IV-B or IV-E agency wants a Federal PLS request, the State must honor that request.

39. *Comment:* If a IV-D caseworker is aware of a new address for a noncustodial parent when the IV-E agency requests the address for an authorized purpose, can the IV-D program provide the address directly or must the agency conduct an independent State PLS search?

Response: If the information is already known, the IV-D agency is authorized to release the information under § 307.13(a)(3) and section 454A(f)(3) of the Act. This permits exchanging information with State Medicaid agencies and other programs designated by the Secretary or other State or Federal agencies to carry out this part, subject to section 6103 of the Internal Revenue Code of 1986.

40. *Comment:* One State recommends that States retain the ability to designate other IV-D offices within the State to submit requests to the Federal PLS when location services are needed instead of requiring a "central" State PLS.

Response: We tried to accommodate multiple State PLS locate interfaces in the past; however, from a cost-effectiveness and quality control standpoint, States now are limited to a central State PLS interface with Federal PLS.

41. *Comment:* One commenter wants acknowledgment that although on the surface this seems to provide flexibility, § 302.35(c) sets up the strong possibility of inconsistency among States and will allow forum shopping for the best deal by "attorneys or agents of the child."

Response: Section 302.35(a)(2)(i) allows access to the State PLS in accordance with State law. As such, State practices may vary. We support State flexibility in this regard.

42. *Comment:* One commenter asks whether there is any authority that supersedes Federal law on releasing information only to persons authorized under sections 453 and 463 that would require IV-D agencies to comply with a request from the Department of Homeland Security (DHS) since DHS is

not an "authorized person" under sections 453 or 463 of the Act.

Response: There is no authority to override sections 453 and 463 of the Act.

43. *Comment:* In the final regulations one commenter requests that States have the ability to deny requests from non-IV-D entities which have a track record of obtaining information for purposes beyond those contemplated by the statute as well as those who have not properly safeguarded the information they have obtained.

Response: A fine for misuse of the NDNH in section 453(l) of the Act can be applied. Also, § 303.21(f) gives ability for State to impose fines or other criminal or civil sanctions. Finally, attestation is designed to protect/alleviate this issue. A IV-D agency should document instances of abuse and if a non-IV-D entity is known to abuse access to data, access should be denied and the reason noted. States should have written policy which may provide guidance in this area.

44. *Comment:* One commenter would like confirmation regarding the extent to which staff determining food stamp eligibility have access to confidential data or location data maintained or obtained by the IV-D program.

Response: Food Stamp agencies have access to the State Directory for New Hires for purposes of verifying eligibility for the program. See 42 U.S.C. 653A(h)(2).

45. *Comment:* Two commenters suggest that Tribal IV-D agencies be specifically included as an "authorized person" in § 302.35(c)(1).

Response: Tribal IV-D agencies have access to the State PLS if they request assistance from a State IV-D agency and submit a referral for case information. The State agency will submit the case to the State PLS as part of its responsibilities with respect to the case.

46. *Comment:* One commenter understands the proposed change to permit a court to obtain location information for the purposes of establishing a support order, even in a non-IV-D case. Yet, the court need not attest to its intent; whereas an attestation is required from a resident parent, legal guardian, attorney, or agent. Is this an oversight or an intentional distinction?

Response: It is intentional because courts are governmental entities. The attestation is required of private citizens or nongovernmental entities.

47. *Comment:* One commenter recommends changing the term "aid" to "assistance as defined at 45 CFR 260.31" in § 302.35(c)(3). This way,

there will be a clear national policy in this area.

Response: We have changed the term "aid" to "assistance" in § 302.35(c)(3) because that is the terminology used in the statute. We have not cited IV-A regulation, however, since it could change in the future.

48. *Comment:* One commenter asks how long must the locate application, attestation, and evidence of authorization be maintained by the State PLS? Does the standard three-year record retention policy apply to these documents?

Response: The three-year record retention rule, as stated in 45 CFR 92.42(b), applies to these documents.

49. *Comment:* One commenter would like to eliminate the reference to a child not receiving aid under title IV-A of the Act in § 302.35(c)(3) and wants corresponding changes to be made to Appendix A to § 302.35(c)(3).

Response: Section 453 of the Act requires the inclusion of this exception.

50. *Comment:* Three commenters ask if a requestor attests to the purpose and use of information that is later discovered to be fraudulent in nature; will the IV-D program be found liable by OCSE? One commenter asks what the penalties are if a requestor violates the attestation or submits a fake "authorization"?

Response: The IV-D agency would not be responsible if it had the attestation on file. Any requestor who violates requirements for receiving Federal PLS information would be subject to any Federal or State penalties.

51. *Comment:* One commenter asks whether a State is required to pass special laws imposing penalties for failure to comply with the provisions of the attestation.

Response: States have discretion to pass such laws.

52. *Comment:* One commenter agrees with the proposed rule requiring the requestor to provide evidence of being the legal guardian, attorney of the child or agent of the child. However, he or she suggests if the requestor is a resident parent, the requestor only attest to being so rather than providing evidence. It would be difficult for the State PLS to identify proof of resident parent status otherwise.

Response: We agree with the commenter and have changed the language in § 302.35(c)(3)(iii) to require the resident parent to attest to being the resident parent.

53. *Comment:* One commenter asks whether private child support enforcement agencies have to provide "evidence of a valid contract" with each request for locate or may the IV-D

program permit a private child support enforcement agency to provide an annual, blanket attestation that a valid contract exists for each request made during the year?

Response: The private child support enforcement agency may not provide an annual blanket attestation that a valid contract exists for all requests made during that year.

54. Comment: One commenter recommends a change to § 302.35(c)(3)(iii) so that both attorneys and agents who allege that they are representing a child are required to provide a valid contract that meets any requirements under State law or policy for acting as an agent of the child. Otherwise, the regulation will violate the statutory authority on which it is based.

Response: The statute does not specify any proof or evidence that must be provided. Section 302.35(c)(3)(iii) indicates that an authorized person provide evidence that the requestor is the legal guardian, attorney, or agent of a child not receiving assistance under title IV–A, and if an agent of such a child, evidence of a valid contract that meets any requirements in State law or written policy for acting as an agent.

55. Comment: One commenter believes that because of the potential for disclosure to unauthorized entities, § 302.35(c)(3)(iii) should require the requestor to furnish a copy of the actual contract, not just “evidence of a valid contract.” Another commenter wants clarification on what evidence is other than a copy.

Response: Evidence of a valid contract may be defined by the State. Therefore, a State may require the requestor to furnish a copy of the actual contract.

56. Comment: One commenter suggests adding the words “of the child” after the word “agent” in § 302.35(c)(3)(iii) in order to track the statute and make clear that the only agents who are authorized persons are agents of the child, not of a parent.

Response: We agree with the commenter and have revised the regulation to reflect the statutory language.

57. Comment: One commenter believes that § 302.35(c)(3)(iii) will be hard to meet for a requestor who claims to be “an agent of such a child.” Existing State laws “for acting as an agent” may not be clear or complete to support this process.

Response: This is an issue for a State to address.

58. Comment: Two commenters question whether private collection agencies (PCAs) and attorneys meet the statutory definition of “authorized persons” and are concerned about

giving private collection agencies access to information. There is no clear definition of “attorney or agent of the child” in the regulations or in statute and in one State, PCAs do not fall within this definition. Most private attorneys in child support matters represent a parent, not a child. PCA contracts are entered into by a custodial parent in her (sic) own right, not as the child’s legal agent. An agency relationship is created by expressed or implied contract or by operation of law, and generally is governed by State law, not Federal law. In addition, it is a settled matter of black letter law that a contract must be between competent parties and that a minor is under the age of legal competence. Therefore, a custodial parent’s contract with a PCA does not make the PCA an “agent of the child” for purposes of locate request under section 453 of the Act.

Response: AT–02–04 clarifies policy and procedures for providing Federal PLS locate services to persons who qualify as an “an agent of the child” for child support purposes. The Action Transmittal lists the definitions of “authorized persons” set forth in section 453(c)(1) through (3) of the Act, including the resident parent, legal guardian, attorney, or agent of the child. We do not read section 453 of the Act to prohibit a State from sending appropriate Federal PLS information to the resident parent in care of a PCA if, under State law, the PCA “stands in the shoes” of the resident parent and the State has evidence in the form of an attestation by the requestor, under § 302.35(c)(3)(iii) that the parent, in fact, has authorized the PCA to act on his or her behalf.

59. Comment: One commenter wants changes made to reflect that States should be required to develop standards and protocols for refusing to provide information to non-IV–D entities when such entities fail to safeguard the information they obtain. These standards should include provisions for notifying such entities of what restrictions apply, what protections they must have in place, and what the consequences of failure to safeguard the information are.

Response: We agree that such standards are reasonable but leave such action to State discretion.

60. Comment: One commenter believes that the administrative cost associated with developing and implementing a fee for non-IV–D entities would far outweigh any benefit.

Response: The fee for Federal PLS services is a statutory requirement under section 453(e)(2) of the Act.

61. Comment: One commenter asks whether any fee collected for the State’s PLS services needs to be claimed as program income.

Response: Any fee collected for the State’s State PLS services is considered program income under 45 CFR 304.50 and must be reported.

62. Comment: One commenter seeks clarification that the title: “To locate an individual who may be the parent of a child in a IV–D or non-IV–D case” refers to locating the custodial as well as noncustodial parent.

Response: The final rule changes the title of § 302.35(d)(1) to: “To locate an individual with respect to a child in a IV–D, non-IV–D, IV–B, or IV–E case” in order to better reflect the statutory language in section 453(a)(2)(A) of the Act. This section covers locating both the custodial as well as the noncustodial parent.

63. Comment: One commenter asks that the following “purpose” be added to § 302.35(d)(1): The State PLS shall locate individuals for the purpose of: facilitating informed and timely decisions about child welfare and permanency. The rationale is that locating parents for IV–B/IV–E purposes goes beyond just “establishing parentage” or “determining who has or may have parental rights to a child” as the language in the proposed rule currently reads. Another commenter asks if “for determining who has or may have parental rights with respect to a child” allow child welfare staff in the IV–B/IV–E agencies to request the IV–D program to locate and release address information for the purpose of placement of a child?

Response: We have inserted reference to title IV–B and IV–E to § 302.35(d)(1) to make clear that those agencies have access to State PLS locate functions for the purposes stated. The purpose of “determining who has or may have parental rights to a child” could be related to permanency planning. The language used is that which is stated in section 453 of the Act. To the second question, only persons as authorized under section 453(a)(2)(A) of the Act may request the IV–D program to locate and release address information for the purpose of placement of a child.

64. Comment: Section 302.35(d)(1) states: the State PLS shall locate individuals for the purpose of establishing parentage, or establishing, setting the amount of, modifying, or enforcing child support obligations or for determining who has or may have parental rights with respect to a child. For these purposes, only information available through the Federal PLS or the State PLS may be provided. This

information is limited to Social Security Number(s), most recent address, employer name and address, employer identification number, wages or other income from, and benefits of, employment, including rights to, or enrollment in, health care coverage, or asset and debt information. One commenter questions why there is a restriction that “for these purposes, only information available through the Federal PLS or the State PLS may be provided* * *”?

Response: This restriction exists because § 302.35(d)(1) does not cover or authorize access to child support information on States’ automated systems (which is addressed in 45 CFR Part 307). This section addresses Federal and State PLS use for IV–D and non-IV–D purposes.

65. *Comment:* Under § 302.35(d)(1), Federal PLS or State PLS information may be provided—but one commenter wants clarification as to whom this information can be provided—his/her own program or another State IV–D program?

Response: Authorized persons include any State or local agency providing IV–D services as well as an authorized person identified in § 302.35(c).

66. *Comment:* One commenter asks: does the phrase “for determining who has or may have parental rights with respect to a child” include grandparents or other persons who may have “parental rights”?

Response: No, section 453(c)(3) of the Act prevents this interpretation and means the parent of a child who would have a legal obligation to provide child support.

67. *Comment:* One commenter asks that the section regarding the State Parent Locator Service be amended to incorporate a family violence provision as follows “Subject to the requirements of this section, the privacy safeguards required under section 454(26) of the Act, and the family violence indicator requirements under § 307.11(f)(1)(x) of this chapter, the State PLS shall disclose the following information to authorized persons for authorized purposes.”

Response: There is reference to section 454(26) of the Act in § 302.35(e): Subject to the requirements of this section and the privacy safeguards required under section 454(26) of the Act, the State PLS shall disclose the following information to authorized persons for authorized purposes. We have included reference to the domestic violence indicator in §§ 302.35(e) and 303.21.

Section 303.3, Location of Noncustodial Parents in IV–D cases

1. *Comment:* One commenter recommends changing the title of this section to include custodial parents as well as noncustodial parents (since the intent of §§ 302.35(a)(1) and 303.3 is to include custodial parents). Another commenter says that if the heading of this section is intended to only apply to noncustodial parents, the commenter has no concern with this as long as he or she can use the State PLS and other locate sources to locate custodial parents and children under § 302.35. If custodial parents and children are brought under § 303.3, the commenter asks that the applicability of the requirements, as they relate to custodial parents and children, be at the State’s discretion. Yet another commenter seeks confirmation of whether there are specific location requirements for custodial parents. The commenter believes that the specific location requirements of proposed rule § 303.3 are more appropriately limited to noncustodial parents.

Response: Section 303.3 only applies to locating the noncustodial parent. There are many instances in which States will have to locate custodial parents and children, e.g., when requested and authorized, or to enable disbursement of collections. A State may choose to use the same approach as set in § 303.3 to do so but it is not mandated.

2. *Comment:* One commenter seeks confirmation that Federal Financial Participation (FFP) will be made available to modify computer system functionality and provide on-going services to comply with the mandate to provide locate services for non-IV–D cases and believes FFP is appropriate and necessary.

Response: FFP is available to modify computer system functionality and provide ongoing services to comply with the mandate to provide locate services for non-IV–D cases.

3. *Comment:* One commenter notes that when the title was changed from “location of absent parents” to “location of noncustodial parents” the meaning of the section was changed and as a result, tens of thousands of law-abiding parents’ information is in State PLS, Federal PLS and National Directory of Child Support Orders databases.

Response: The use of the term noncustodial parent in lieu of absent parent was made via regulatory changes in 1999 to reflect the same change made in the statute. The change was made to reflect that noncustodial parents are not

(or should not be) absent from their children’s lives.

4. *Comment:* One commenter asks for clarification regarding what the differences are between searching State databases for information (which is encouraged) and releasing information from the system (which is prohibited). The commenter believes the sentence in § 303.3(b)(1) “Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance * * *” conflicts with proposed § 302.35(a)(2)(ii) which states that the State PLS would not be able to, in response to a non-IV–D request, release information from the statewide system.

Response: There is no conflict because § 303.3 applies only to IV–D cases and to locate efforts by the State IV–D agency in those cases. The restrictions on release of IV–D systems data does not apply to the IV–D agency or its use of program data for IV–D program purposes. The release of information in the statewide systems is restricted by section 454A of the Act.

5. *Comment:* One commenter asks whether the Federal response changes (see comment #4 above) based on a State’s opinion that recipients of food stamp benefits must cooperate with the IV–D program.

Response: If there is a IV–D case involving a food stamp recipient who is required to cooperate with the IV–D agency, access to data on the statewide automated system is authorized for authorized persons and IV–D purposes.

6. *Comment:* One commenter urges the agency to disclose to the public what tools and data sources are going to be employed to locate individuals. It is suggested that these tools and data sources be disclosed in the **Federal Register**, giving individuals time to comment on the accuracy and reliability of the tools used.

Response: States may disclose information regarding State tools and data sources. The Systems of Record used by the Federal PLS, the National Directory of New Hires and the Federal Case Registry, are published in the **Federal Register** and updated as necessary in accordance with Federal law.

Section 303.20, Minimum Organizational and Staffing Requirements

1. *Comment:* One commenter is troubled about the lack of actual standards regarding proper staffing of the State PLS. In particular, the investigative process behind non-IV–D requests will not be adequately staffed

without some guidance, especially considering budget cuts.

Response: The State determines how the State PLS is operated and there are various degrees of automation for access of data. We do not think it is appropriate to regulate this because of the different State PLS operations that take place among the States.

Section 303.21, Safeguarding and Disclosure of Confidential Information

1. Comment: One commenter asks why the Office has chosen to issue safeguarding rules for IV-D data now if it did not do so before. In most States there is an established body of privacy law that governs access to personal data maintained by State agencies and limits its use and disclosure; and at the time PRWORA was enacted, there were no discussions about preempting such bodies of State law by Federal statute.

Response: States requested guidance regarding access to data because of the myriad of access requirements and prohibitions enacted as part of PRWORA. The requirements of section 454(8) of the Act state that States “shall * * * disclose only information described in sections 453 and 463 to the authorized persons specified in such sections for the purpose specified in such sections.”

2. Comment: One commenter raises concern regarding use of the word “confidential” and recommends that “personal identifying” information be substituted for “confidential” as it better captures the meaning of the information discussed in these proposed regulations.

Response: We believe the term “confidential” which is used in the statute is more consistent and appropriate for implementing the regulation.

3. Comment: One commenter requests that, within the definition of “confidential information”, “employment information” be changed to “employer name and address” in order to be less broad and more consistent with § 302.35.

Response: Access to data through the Federal PLS and the State PLS in § 302.35 is not restricted to employer name and address.

4. Comment: One commenter requests a specific list of factors by which an individual can be identified because the phrase “not limited to” in § 303.21(a) is vague. As currently written, a State could violate the regulation or get differing interpretations by different workers. Suggested change: “Confidential information means any information relating to a specified individual or an individual who can be identified by reference through any

other nonconfidential source by reference to one or more factors specific to him or her, including, but not limited to, the individuals SSN, residential or mailing addresses, employment information, and financial information. Excluded as factors specific to him or her are numbers unique to the computerized child support enforcement system for individuals, as such a number cannot be used as an identifying factor outside of access to the confidential computerized child support enforcement system.”

Response: We have not included this clarification in the regulation. Since the State establishes the IV-D case numbers and determines when and how they are used, we are unable to conclude that such numbers could not be identifying information. We question why there would be a need to release IV-D case numbers to an entity outside the administration of the IV-D program.

5. Comment: One commenter questions the intent of § 303.21(a) and recommends allowing States to release payment-related information in accordance with State law. The commenter believes the last sentence “the amount of support ordered and the amount of support collection are not considered confidential information for purposes of this section” opens up the IV-D agency to having to provide payment records to anyone who makes a request whether or not the requestor is associated with the case or intends to use the information for child support related purposes. One commenter says the definition of “confidential information” does not include the support-ordered amount or the amount of a support collection. Does this mean that if the IV-D agency/SDU is approached by an outside entity or “interested third party” who wants the names and collections of persons, that the IV-D agency/SDU is not prohibited from providing such information? (Assume the third party is not able to help IV-D program establish and enforce.) What if the interested third party has a name and wants to know the corresponding charges and payments against the obligation? One commenter is concerned with the last sentence in § 303.21(a) that appears to make payment histories and arrearage records, which contain amounts of support ordered and collection amounts, a part of the public record, and would like clarification as to the difference between that and “financial information” which is confidential. The commenter does not understand the meaning of this apparent contradiction.

Response: We agree that the language in the proposed rule is confusing. We

deleted the language “The amount of support ordered and the amount of a support collection are not considered confidential information for purposes of this section.” Interested third party may not receive payment histories and arrearage records.

6. Comment: One commenter asks: in order to balance the need for accurate payment records and meet IV-D and IRS requirements, is it acceptable to show an IRS payment amount in these payment records, but not to identify the payment as an IRS receipt?

Response: We believe it is acceptable for child support purposes but this is ultimately governed by Internal Revenue Service Code.

7. Comment: One commenter believes that if the source of the information on the document to be released cannot, on the face of the document, be linked to the Federal PLS, Internal Revenue Service (IRS), the National Directory of New Hires (NDNH), or other protected source, there is no need to restrict release of a copy of a document that is a matter of public record.

Response: We disagree. The statutory provisions restrict disclosure of specific information whether or not the source is identified.

8. Comment: One commenter asks that the following sentence be added to the end of § 303.21(a): “Information required by state law to be released to designated persons or entities is not considered ‘confidential’ if the information has been independently verified or furnished from a source that is not protected by Title IV-D of the Social Security Act.”

Response: The statement as proposed is too broad because it could be interpreted to include personal identifying information on the statewide automated system.

9. Comment: One commenter would like confirmation that an individual’s name would be considered “confidential information” as it would be information relating to a specific individual who could be identified. If the individual’s name is confidential and the State is not able to release the name, under what circumstances could we release the amount of support ordered/collected without the name?

Response: Confidential information about individuals may not be disclosed outside the administration of the IV-D program. The State could release aggregate amounts of support collected in the State—e.g., \$X for FY 2006.

10. Comment: One commenter would like noted that if a IV-D program remains unable, under IRS rules, to release the amount of the Federal Tax Refund Offset payment to non-IV-D

entities, the program is severely hampered in our ability to report collection obligation compliance information to courts, custodial parties, etc.

Response: We continue to work with the Department of the Treasury regarding the release of offset collection information. The Department of Treasury has offered to the Congress suggested legislation that would amend the Internal Revenue Code regarding this concern and the Department of Health and Human Services supports the proposal.

11. *Comment:* One commenter is concerned that the requirement that “any official with whom a cooperative agreement * * * has been entered into * * *” may not disclose confidential information received from the IV–D agency applies to agreements with the Clerks of Courts. Documents filed with the court, which have not been sealed, are open to inspection by such parties as the parties’ creditors, commercial information brokers, and newspaper reporters. OCSE needs to recognize that this “open records” type of disclosure is permissible for Clerks of Courts despite this regulation.

Response: Section 454(26) of the Act requires IV–D agencies to have in effect safeguards, applicable to all confidential information relating to proceedings or actions to establish paternity or to establish, modify or enforce support, that are designed to protect the privacy rights of the parties; and 45 CFR 302.12(a)(3) requires that those who receive information (such as through cooperative agreements) shall abide by those safeguards, because they are carrying out functions for the State IV–D agency. However, this regulation does not prohibit the disclosure of documents filed with the court, which have not been sealed and are open to inspection by such parties as the parties’ creditors, commercial information brokers, and newspaper reporters.

12. *Comment:* One commenter notes the general rule prohibiting disclosure of confidential information has an exception “as authorized by the Act and implementing regulations * * *.” Which implementing regulations does this refer to?

Response: Title IV–D regulations at 45 CFR Parts 301–309 are the “implementing regulations” referenced.

13. *Comment:* Several commenters would like clarification regarding the provision to not disclose confidential information obtained “in connection with the performance of IV–D functions outside the administration of the IV–D program.” What do these “IV–D functions outside of the administration

of the IV–D program” refer to? Clarification is needed in order to reflect reality that information about the noncustodial parent may be used in any way necessary to establish paternity or establish, modify or enforce a child support order.

Response: We have clarified the intent of the language by restating it to read “may not disclose any confidential information, obtained in connection with the performance of IV–D functions, outside the administration of the IV–D program.”

14. *Comment:* One commenter is concerned that the Supplementary Information section of this proposed rule adds a limitation not stated in the actual rule by saying “the IV–D program may only disclose the minimum amount of confidential information needed for the purpose provided.”

Response: We have deleted the sentence “In making a disclosure under this provision, the IV–D program only disclose the minimum amount of confidential information needed for the purpose provided” as stated in the preamble describing Section 2: Safeguarding and Disclosure of Confidential Information.

15. *Comment:* Two commenters believe § 303.21(d) is very restrictive, adds undue complexity to IV–D disclosure policies, and places an undue burden on States. For example, unless released within the purpose of the IV–D program, the State would need to figure out how to withhold IV–D information from courts without compromising the court’s ability to administer the court case.

Response: Disclosure of necessary information to the courts needed for purposes of the IV–D program is authorized except as limited by Section 6103 of the Internal Revenue Code. (Also see Q and A #10).

16. *Comment:* One commenter asks that § 303.21(d) focus on specifying when disclosure of information to other government programs is permitted and for what purposes.

Response: Section 303.21(d)(2) and (3) address circumstances under which information may be disclosed and for what purposes.

17. *Comment:* One commenter is concerned that the section on authorized disclosures is made in such a general manner that most administrators responsible for safeguarding data privacy would have a great deal of difficulty making all the inferences required to actually share data.

Response: We have redesigned Appendix A for clarity. We reorganized it so it is laid out by authorized person

followed by authorized purpose. We have developed a new Appendix B which addresses locate services in connection with enforcement or determination of child custody and in cases of parental kidnapping of a child.

18. *Comment:* One commenter asks about the process of releasing confidential information in accordance with § 303.21(d)(1) under which information may be released “to such person or persons designated by the individual to whom the information relates or who is the custodial parent or legal guardian of a child * * *.” Should the designation be written or verbal? Are there time restrictions to the designation? Another commenter is concerned that § 303.21(d)(1) would require release of confidential information to anyone the individual designates, even though State statute allows only for minimal information to be released. The commenter recommends that the proposed rule be changed to not require release of the information and instead say “information may be released unless prohibited under State statute.”

Response: As indicated earlier in the preamble, this paragraph was removed as a separate authorized disclosure because under paragraph (c), disclosure to an individual would be allowed for IV–D purposes and would be governed by any safeguarding provision in State law as well.

19. *Comment:* One commenter requests that the term “shall” be replaced with “may” because it is appropriate for States to have the flexibility to address, at the State level, how they respond to requests from an individual to release confidential information. For example, they would want to be able to determine, in certain situations, that it would be appropriate for them to deal directly with the customer, rather than a designee.

Response: See answer to #18.

20. *Comment:* One commenter thinks the rule should make clear that a custodial parent or legal guardian may obtain information about the child in a case and may authorize release of information about the child.

Response: This language has been removed. See answer to #18.

21. *Comment:* One commenter would like to strike the prohibition against providing confidential information about an individual to any other individual involved in the case.

Response: The Federal and State IV–D programs are responsible for protecting sensitive personal information and broad authority as suggested by the commenter is inappropriate.

22. *Comment:* One commenter believes the ability to provide locate information to a non-IV-D requestor conflicts with the broad prohibition against disclosing "confidential" information about one individual to another person involved in the case (as proposed in § 303.21(d)(1)). Several commenters are concerned that § 303.21(d)(2) creates a potential danger for overuse of this broad discretion. The proposed rule would essentially grant wide-open access to all the records and databases available to State child support programs, without any realistic ability for States to monitor use of this confidential data.

Response: Proposed § 303.21(d)(1) has been removed from the final rule. Section 303.21(d)(2) (now § 303.21(d)(1)) has been limited to the specific programs which have been designated by the Secretary. These programs also have safeguarding rules.

23. *Comment:* There were several commenters who questioned the mandatory rather than permissive disclosures in § 303.21(d)(2). One commenter wants to know why it is written as a mandate for the State IV-D program to disclose confidential information to all entities listed and believes the "permissive disclosure" allowed prior to February 1999 was more appropriate than a mandated disclosure. Another commenter would like the phrase "must" changed to "may" in § 303.21(d)(2) because the commenter believes a State should be authorized to disclose information and that it should not be a requirement to disclose the information. Such a change would also eliminate the need for the "to the extent that it does not interfere with the IV-D program meeting its own obligation" language in the same sentence. Three commenters point out that § 303.21(d)(2)(ii) would require IV-D agencies to report child abuse (or at least give the appearance of such), rather than making this reporting discretionary.

Response: Former § 303.21 Safeguarding information, was removed with passage of Public Law 104-93. PRWORA was more permissive. Therefore, we have changed the language in § 303.21(d) from "must" to "may" and have added "upon request" for clarity at the beginning of paragraph (1).

24. *Comment:* One commenter appreciates the fact this regulation does not mandate the manner or the timeframes by which the IV-D program must respond to authorized requestors. States must have this flexibility.

Response: We are committed to State flexibility to the extent allowable and to our Federal/State/Tribal partnership.

25. *Comment:* Is it appropriate that Tribal agencies be authorized to have access to data under § 303.21 as discussed in the applicable preamble part?

Response: Tribal IV-D agencies are included in § 303.21(d)(1) because they are agencies administering programs under title IV-A and IV-D of the Act. However, for clarity we have included specific reference to Tribal programs under title IV-A of the Act in § 303.21(d)(1).

26. *Comment:* One commenter seeks confirmation that this section permits Federal or State auditors, or other agencies with oversight responsibilities, to access confidential information or IV-D case-specific information.

Response: Authority for access to information for purposes of the administration of the plan or program approved under title IV-D of the Act includes audits conducted by Federal or State auditors, or other agencies with oversight responsibility.

27. *Comment:* Do "under circumstances which indicate that the child's health or welfare is threatened" include a release to law enforcement agencies? Does the language of this proposed regulation allow us to release information from our child support files in response to an AMBER Alert?

Response: Based on received comments, we have deleted the language in § 303.21(d) as stated in the NPRM that would have allowed the State IV-D program to release information to law enforcement agencies upon request. However, the information can be released to the IV-B or IV-E agency where it is necessary to carry out a State IV-B or IV-E function.

28. *Comment:* One commenter requests that the phrase "best interest of the child" be inserted because this language is more appropriate than "under circumstances which indicate that the child's health or welfare is threatened."

Response: See response to Question #28 immediately above.

29. *Comment:* One commenter seeks clarification as to whether the proposed rule would limit the use of SDNH information outside of the IV-D program, subject to the exceptions specified in § 303.21(d)(2). The commenter does not want restrictions on the use of SDNH data. This data is used to collect taxes and to detect and prevent fraud in a wide range of programs. We are unaware of any Federal authority for limiting use of this

State data. In fact, section 453A(h)(3) of the Act explicitly requires States to share State new hire data with "State agencies operating employment security and worker's compensation programs." If OCSE intends to impose these strict limitations on the use of SDNH data, further discussion of this proposal with States is warranted.

Response: Safeguarding of SDNH data is determined by whether or not the database is part of the statewide child support enforcement automated system. Any information in the statewide system is protected and its access limited as set forth in § 307.13. If the SDNH is housed in a separate agency, these restrictions do not apply to non-IV-D use.

30. *Comment:* One commenter believes the intent of this rule, as expressed in the preamble, does not fit with requiring independent verification of Federal Case Registry and National Directory of New Hires information.

Response: Restricted access to Federal Case Registry (FCR) and National Directory of New Hires (NDNH) information is statutory. Independent verification is a means to enable a State to disclose this information for non-IV-D purposes by changing the source of the data through verification.

31. *Comment:* One commenter would like an exception made under § 303.21(d)(3) for title XIX (Medicaid programs). The prohibition on disclosing unverified FCR and NDNH information contradicts the mandate in 42 U.S.C. 654A(f)(3) to share IV-D system information with Title XIX programs.

Response: Section 454A(f)(3) authorized limited sharing of information on the title IV-D automated system to title XIX agencies. There is a separate statute at section 453(h) and (i) that explicitly restricts access to NDNH and FCR data and does not authorize access to such data by title XIX agencies. Section 303.21(d)(3) addresses disclosure of information obtained from the IRS or Federal PLS and not State systems data.

32. *Comment:* Two commenters are confused by the requirement to independently verify information the IV-D program receives from NDNH or FCR. How would such information be independently verified? Is this rule proposing that the State IV-D agency would have to contact the other State to verify the FCR information and NDNH information?

Response: This rule is not requiring or advocating the IV-D agency to independently verify information received from the NDNH or the FCR. It merely describes the circumstances

under which such data may be disclosed to persons not specified in section 453 of the Act (non-IV-D purposes). For example, assume a State IV-D agency submits an address received from the NDNH for postal verification. Once the postal verification is complete, that information has been independently verified and can be released. The source of the address is the postal service, not the NDNH.

33. Comment: One commenter strongly recommends deleting the provision in § 303.21(d)(3) from the proposed regulation restricting access to NDNH, FCR, and IRS data.

Response: Because these restrictions are statutory, they cannot be deleted.

34. Comment: While one commenter recognizes that Federal law requires restriction on redisclosure of IRS data and has no objection to this aspect, the commenter is unaware of any basis in Federal statute for requiring independent verification of information from NDNH, FCR, or MSFIDM.

Response: Federal statute is explicit regarding authorized disclosure of NDNH and FCR data. Section 453 of the Act specifies that information from the Federal PLS (of which the NDNH and FCR are a part) may only be released to authorized persons and for certain purposes. This rule is not requiring the IV-D program to independently verify information received from the NDNH or the FCR. It merely describes the circumstances under which such data may be disclosed to persons not specified in section 453 of the Act (non-IV-D purposes).

35. Comment: One commenter notes that a State currently accepts information from the FCR and NDNH as “independently verified” and takes action based upon that information. This provision (requiring that the State in itself independently verify such data) will require reprogramming systems and will cause operational burden on States.

Response: This rule is not requiring the IV-D agency to independently verify information received from the NDNH or the FCR. It merely describes the circumstances under which such data may be disclosed to persons not specified in section 453 of the Act (non-IV-D purposes). In fact, we encourage IV-D agencies to take automated action based on the NDNH or the FCR.

36. Comment: One commenter asks for clarification on whether the State would be able to share locate and paternity establishment information on a State’s IV-D system through an automated interface with Child Welfare, Foster Care, and Medicaid agencies.

Response: Yes, under certain circumstances and with certain limitations. See §§ 303.21 and 307.13

37. Comment: Three commenters are concerned that the independent verification requirement will impede a State’s ability to share information in a timely, efficient and automated manner. In particular, the requirement will impede State’s ability to assist State IV-E and Medicaid agencies in recovering public health insurance costs and locating parents. At a minimum, States will need to segregate NDNH, FCR, and MSFIDM data so that they do not transmit this information to State IV-E and Medicaid agencies pending independent verification. This will require additional automated system development, at a cost to both States and the Federal government, and will impede the functioning of automated interfaces with other State agencies. Funds and resources devoted to programming these requirements could better be used on system development that supports the core mission of the child support program.

Response: This rule is not requiring the IV-D agency to independently verify information received from the NDNH or the FCR. It merely describes the circumstances under which such data may be disclosed to persons not specified in section 453 of the Act (for non-IV-D purposes).

38. Comment: One commenter believes the regulation fails to provide guidance to IV-D agencies regarding the use of Federal tax offset amounts and asks: how can a IV-D agency “independently verify” the amount of a Federal tax refund intercept?

Response: There is no way to independently verify Federal tax refund offset information. We continue to work with the Department of the Treasury and the Congress to resolve this issue.

39. Comment: One commenter notes the regulation requires that authorized disclosures, except to IV-A agencies, cannot include information obtained from the FCR, unless independently verified. Does this mean that information about the noncustodial parent’s access to military medical benefits obtained from the Defense Data Management Center (DMDC) and transmitted to the FCR is confidential?

Response: States acquire DMDC through a FCR transaction but the data is not part of the FCR database. Information about the noncustodial parent’s access to military medical benefits is thus not subject to the “independent verification” requirement.

40. Comment: One commenter would like confirmation that § 303.21(d)(3) means that information may not be

shared with a custodial parent seeking information about medical support benefits available to a child but that it may be released to the IV-A agency.

Response: There is no restriction on sharing information from the Federal PLS about medical support benefits with custodial parents in IV-D cases. Such information is not received from the NDNH or the FCR.

41. Comment: Four commenters note that the requirement for independent verification of NDNH and FCR information prior to disclosure could have the following consequences: delay in sending out income withholding notices (will not meet 2-day Federal timeframe); delay to families and children in getting payments; burden on employers who may be required to furnish additional employment verification to the SDNH; require automated system programming changes since the proposed rule would require segregation of NDNH and FCR and change to systems automatic processing of New Hire information; is an unacceptable burden on IV-D agencies (unfunded mandate); will impair an agency’s ability to assist other State entities authorized to receive such information; and will complicate the process because depending on purposes for which information is to be used, sometimes it must be verified and sometimes not.

Response: This rule is not requiring the IV-D agency to independently verify information received from the NDNH or the FCR before it is used in the administration of the IV-D program. It merely describes the circumstances under which such data may be disclosed to persons not specified in section 453 of the Act (for non-IV-D purposes). We encourage IV-D agencies to take automated action based on the NDNH or the FCR information.

42. Comment: One commenter believes that to now require independent verification of this data seems to be contradictory to previously stated policy by the Federal OCSE (i.e., DCL-02-22 that offers the use of the NDNH, and MSFIDM as better sources than 1099 information).

Response: Independent verification is not being required. It is merely a condition that must be met if the State wishes to use or disclose information for non-IV-D purposes to nonauthorized persons. This applies only to non-IV-D purposes. There is no such restriction in IV-D cases.

43. Comment: One commenter said the State does not routinely track the “source” of most information and thinks the administrative burden involved with sharing information under the proposed

restrictions may be too great for the program to overcome. Another commenter indicated that the State's IV-D automated system is required to identify the source of address and employment information the IV-D agency receives from automated sources. If IV-D staff independently verified NDNH information, the staff would have to change the source of confidential information and then neither State nor Federal Child Support Enforcement agencies would be able to calculate how many successful "hits" the State is receiving from NDNH or FCR.

Response: The source of information is a recommended but not required data element in State child support systems. However, most States do identify the source of information on their systems to meet other tracking requirements such as tracking responses from each automated location source.

44. *Comment:* One commenter requests that if the Office insists on including the restriction that prohibits disclosure of NDNH and FCR information to title IV, XIX and XXI agencies, the Office insert language to clarify "Except for SPLS disclosure authorized under § 302.35(c)(5), the IV-D program may not disclose FCR and NDNH data to IV-B and IV-E agencies."

Response: Because of authority in section 453(c) of the Act, in § 307.13(a)(4)(iii) we have indicated that NDNH and FCR information is available to IV-B and IV-E agencies for the purposes set forth in section 453 of the Act.

45. *Comment:* One commenter would like the Office to recognize that the mandate to disclose to Title IV-B and IV-E agencies under § 303.21(d)(2) and the prohibition on that mandated disclosure of NDNH and FCR information to IV-B and IV-E agencies without first independently verifying under (d)(3) will create confusion because under 42 U.S.C. 653(c)(4), IV-B, and IV-E agencies are authorized persons for receiving NDNH and FCR information for authorized purposes without independent verification for the limited purposes of establishing parentage and support.

Response: Section 453(c) of the Act provides authority for IV-B and IV-E agencies to receive NDNH and FCR information without independent verification.

46. *Comment:* One commenter notes that § 303.21(e) makes it clear that a legislative body or governmental committee cannot obtain the release of information pertaining to an individual without consent of the individual. Please verify that it is up to the State to

determine the nature of the consent of the individual (e.g., written, verbal, or notarized permission or a State could deny permission entirely?).

Response: To the extent that an individual in a IV-D case submits a request to a legislator or legislative body concerning his or her IV-D case, the IV-D agency may disclose the information necessary for the response because the inquiry relates to the administration of the IV-D program and is authorized under paragraph (c). As mentioned earlier in the preamble, we deleted the language under paragraph (e) Safeguards, that "safeguards shall also prohibit disclosure to any committee or legislative body (Federal, State, or local) of any confidential information, unless authorized by the individual as specified in paragraph (d) of this section."

47. *Comment:* One commenter, to emphasize the requirement that States establish the safeguards for victims of family violence required by the statute and by the automated system regulation, requested the following sentence be added to the end of § 303.21(e): "These safeguards shall also include prohibitions against the release of information when the State has reasonable evidence of domestic violence or child abuse against a party or a child and that the disclosure of such information could be harmful to the party or the child, as required by section 454(26) of the Act, and shall include use of the family violence indicator required under § 307.11(f)(1)(x) of this chapter."

Response: We agree with the commenter and have revised § 303.21(e) accordingly.

48. *Comment:* One commenter recommends adding a qualification to § 303.21(e) that the information may be released where members of the legislature want information with respect to a IV-D case because of a constituent request on a particular case.

Response: Addition of a qualification is not necessary. Under § 303.21(c) such disclosure is allowable because it is for IV-D purposes.

Appendix A to § 303.21, Safeguarding Confidential Information

1. *Comment:* One commenter is concerned that Appendix A does not recognize that among the duties of the IV-D program is the duty to avoid fraud in publicly-funded programs.

Response: States are responsible for avoiding fraud in any publicly-funded program. However we have no authority to allow access to specific data when prohibited or limited by Federal statute.

2. *Comment:* One commenter notes that the preamble to the proposed rule and the proposed language of § 303.21 impose an independent verification requirement for NDNH but not for SDNH data. Yet the chart in Appendix A following proposed § 303.21 applies this independent verification requirement to disclosure of SDNH data. This appears to be an error. If not, this requirement would be a major limitation on State use of State new hire data that has no basis in Federal law.

Response: The chart indicates that independent verification is needed if the source of information is NDNH, FCR, or IRS, except that NDNH or FCR information may be shared with the IV-A, IV-B, and IV-E programs without verification. As mentioned earlier, we have redesigned Appendix A and added a new Appendix B and C. There is no requirement to independently verify SDNH information.

Section 303.70, Procedures for Submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (FPLS)

1. *Comment:* One commenter recommends that the Office specify that the word "individuals" as used in paragraph (a) includes parents, putative fathers, children and caretaker relatives.

Response: Section 453 of the Act governs whom the Federal PLS may attempt to locate and by cross-reference in section 454(8) of the Act, whom the State PLS may attempt to locate. Section 453(a)(2)(A) refers to attempting to locate any individual "(i) who is under an obligation to pay child support; (ii) against whom such an obligation is sought; (iii) to whom such an obligation is owed, or (iv) who has or may have parental rights with respect to a child." Caretaker relatives do not fit any of those conditions. However, we have substituted "parents, putative fathers, and children" for "individuals" in § 303.20(a).

2. *Comment:* One commenter would like the following "purpose" to be added: The State PLS shall locate individuals for the purpose of facilitating informed and timely decisions about child welfare and permanency, since locating parents for IV-B/IV-E purposes goes beyond just "establishing parentage" or "determining who has or may have parental rights to a child" as the language in the proposed rule currently reads.

Response: The language in § 303.70(e)(1)(i) is the authorized purpose as stated in section 453(a)(2) of the Act for the release of information to IV-B and IV-E State agencies and is

consistent with timely decisions regarding child welfare.

3. *Comment:* One commenter would like the word "aid" changed to "assistance as defined at 45 CFR 260.31" in the proposed rule. This way, there will be a clear national policy in this area.

Response: We have changed the word "aid" to "assistance" as suggested by the commenter but did not cite the regulation because it may change.

Section 307.13, Security and Confidentiality for Computerized Support Enforcement Systems in Operation After October 1, 1997

1. *Comment:* Will more guidance be given to IV-D agencies regarding the type of information that will be needed by the State and Tribal agencies administering programs under titles IV, XIX, and XXI of the Act?

Response: We encourage IV-D agencies to work with other agencies to make such determinations.

2. *Comment:* Could IV-A, XIX, and XXI workers have login IDs and passwords to the IV-D system if their access to the IV-D system were sufficiently limited to view only the information that those workers had the right to access?

Response: It is possible but would require additional programming to ensure that the non-IV-D worker has access to only the authorized data including, as applicable, independently-verified data. Non-IV-D workers cannot have direct access to the IV-D screens,

because usually the data on a typical IV-D system screen may contain IRS and financial institution information

3. *Comment:* One commenter asks for clarification of the phrase "outside the IV-D program" in § 307.13(a)(5). Does this phrase mean that the State IV-D agency may not disclose NDNH or FCR information without independent verification even if it is a disclosure that is necessary to establish, modify or enforce child support? Would this phrase prohibit the IV-D agency from using MSFIDM information as evidence in a contempt of court proceeding to show the delinquent obligor had assets but still failed to pay child support as ordered unless the IV-D agency first obtained independent verification?

Response: Establishing, modifying or enforcing a child support order, or a court proceeding where proof is brought regarding the fact that a delinquent obligor had assets but still failed to pay child support, are all IV-D purposes for a IV-D case. Because they are IV-D purposes, the IV-D agency may disclose NDNH or FCR information and independent verification does not apply.

4. *Comment:* One commenter seeks clarification that § 307.13(a)(5) [now § 307.13(a)(4)] does not require independent verification of FCR and NDNH information. If so, the commenter recommends deleting this provision as it is administratively burdensome. One commenter would like the Office to eliminate the

restriction that requires independent verification of NDNH and FCR information to title IV, XIX and XXI agencies.

Response: Independent verification of NDNH and FCR information is only necessary for disclosure for non-IV-D purposes. The regulation has been rewritten for clarity and § 307.13(a)(4) requires written policies that limit disclosure outside the IV-D program, of National Directory of New Hire information, Federal Case Registry information, and IRS information that is restricted as specified in the Internal Revenue Code. Financial institution information cannot be shared outside the IV-D program. IV-A, IV-B, and IV-E agencies are authorized under various subsections of section 453 of the Act to receive NDNH and FCR information from the Federal PLS for certain specified purposes. Since these agencies are authorized to have this information, we are permitting the IV-D agency to disclose the NDNH or FCR information from the IV-D computerized support enforcement system directly to the IV-A, IV-B, or IV-E agency if it is being requested for the purpose authorized under section 453 of the Act. For IV-B and IV-E programs this includes establishing paternity or parental rights with respect to a child.

5. *Comment:* One commenter seeks clarification as to who is responsible to conduct any verification.

Response: The State IV-D agency must independently verify the data.

APPENDIX A: LOCATING INDIVIDUALS THROUGH THE STATE PLSs § 302.35

Authorized person/program	Authorized purpose of the request	Persons about whom information may be asked	Sources searched	Authorized information returned	Limitations ¹
Agent/attorney of a State who has the duty or authority to collect child and spousal support under the IV-D plan. Section 453(c)(1).	Establish paternity. Establish, set the amount, modify, or enforce child support obligations and or to facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed. Locate a parent or child involved in a non-IV-D child support case to disburse an income withholding collection. Section 453(a)(2).	Noncustodial Parent Putative Father Custodial Parent Children. Section 453(a)(2)(A).	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements: Person's Name Person's SSN Person's address Employer's name Employer's address .. Employer Identification Number. Section 453(a)(2)(A)(iii). Wages, income, and benefits of employment, including health care coverage. Section 453(a)(2)(B). Type, status, location, and amount of assets or debts owed by or to the individual. Section 453(a)(2)(C).	See footnote.

APPENDIX A: LOCATING INDIVIDUALS THROUGH THE STATE PLSs § 302.35—Continued

Authorized person/program	Authorized purpose of the request	Persons about whom information may be asked	Sources searched	Authorized information returned	Limitations ¹
Court that has the authority to issue an order against an NCP for the support and maintenance of child, or to serve as the initiating court in an action to seek a child support order. Section 453(c)(2).	To facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed.	Noncustodial Parent Custodial Parent Putative Father Child	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements as above. Wages, income, and benefits of employment, including health care coverage. Section 453(a)(2)(B). Type, status, location, and amount of assets or debts owed by or to the individual. Section 453(a)(2)(C).	No Internal Revenue Service (IRS) information provided for non-IV-D cases unless independently verified. No Multistate Financial Institution Data Match (MSFIDM) and no State Financial Institution Data Match (FIDM) information provided for non-IV-D cases. No required subsequent attempts to locate unless there is a new request.
Resident parent, legal guardian, attorney, or agent of a child not receiving IV-A benefits (a non-IV-D request). Section 453(c)(3). ²	To facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed.	Noncustodial Parent Putative Father	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements as above. Wages, income, and benefits of employment, including health care coverage. Section 453(a)(2)(B). Type, status, location, and amount of assets or debts owed by or to the individual. Section 453(a)(2)(C).	Child not receiving IV-A benefits. No IRS Information. No MSFIDM and no State FIDM information provided for non-IV-D cases. In a non-IV-D request, attestation is required as specified in § 302.35(c)(3)(i)-(iii).
State agency that is administering a Child and Family Services program (IV-B) or a Foster Care and Adoption IV-E program. Section 453(c)(4).	To facilitate the location of any individual who has or may have parental rights with respect to the child. Section 453(a)(2)(iv).	Noncustodial Parent Putative Father Custodial Parent Child. Section 453(a)(2)(A).	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements as above. Wages, income, and benefits of employment, including health care coverage. Type, status, location, and amount of assets or debts owed by or to the individual. Section 453(a)(2)(C).	No required subsequent attempts to locate unless there is a new request. No IRS information unless independently verified. No MSFIDM information and no State FIDM information provided.

¹ No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. See Section 453(b)(2) for release process to court or agent of the court.

² A Tribal IV-D program may request access to the Federal PLS under this authority. See PIQ-07-02/TPIQ-07-02, Q&R 7.

APPENDIX B: LOCATING AN INDIVIDUAL SOUGHT IN A CHILD CUSTODY/VISITATION OR PARENTAL KIDNAPPING CASE

Type of request	Authorized person/program	Authorized purpose of the request	About whom information may be requested	Sources searched	Authorized information returned	Limitations ¹
LOCATING AN INDIVIDUAL SOUGHT IN A CHILD CUSTODY OR VISITATION CASE.	Any agent or attorney of any State who has the authority/duty to enforce a child custody or visitation determination. § 463(d)(2)(A). A court, or agent of the court, having jurisdiction to make or enforce a child custody or visitation determination. § 463(d)(2)(B).	Determining the whereabouts of a parent or child to make or enforce a custody or visitation determination. § 463(a)(2).	A parent or child. § 463(a).	Federal Parent Locator Service. In-state sources in accordance with State law.	Only the three following elements: Person's address Employer's name Employer's address § 463(c).	See footnote. No IRS information provided. No MSFIDM or State FIDM information provided. No subsequent attempts to locate unless there is a new request.
LOCATING AN INDIVIDUAL SOUGHT IN A PARENTAL KIDNAPPING CASE.	Agent or attorney of the U.S. or a State who has authority/duty to investigate, enforce, or prosecute the unlawful taking or restraint of a child. § 463(d)(2)(C).	Determining the whereabouts of a parent or child to enforce any State or Federal law with respect to the unlawful taking or restraint of a child. § 463(a)(1).	A parent or child. § 463(a).	Federal Parent Locator Service. In-state sources in accordance with State law.	Only the three following elements: Person's address Employer's name Employer's address § 463(c).	See footnote. No IRS information provided. No MSFIDM or State FIDM information provided. No subsequent attempts to locate unless there is a new request.

¹ No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. See Section 453(b)(2) for release process to court or agent of the court.

APPENDIX C: AUTHORITY FOR STATE IV–D AGENCIES TO RELEASE INFORMATION TO NON-IV–D FEDERAL, STATE, AND TRIBAL PROGRAMS

Authority	Authorized purpose of request	Authorized person/program	Authorized information returned	Limitations
Sections 453 and 454A(f)(3) of the Act, Section 1102 of the Act; and 45 CFR 307.13.	To perform State or Tribal agency responsibilities of designated programs.	State or Tribal agencies administering title IV, XIX, and XXI programs.	Confidential information found in automated system.	No Internal Revenue Service information unless independently verified. No MSFIDM or State FIDM information provided. No NDNH and FCR information for title XIX and XXI unless independently verified. For IV–B/IV–E, for purpose of section 453(a)(2) of the Act can have NDNH and FCR information without independent verification. —Any other purpose requires independent verification. For IV–A NDNH/FRC information for purposes of section 453(j) of the Act without independent verification. —Need verification for other purposes.

APPENDIX C: AUTHORITY FOR STATE IV–D AGENCIES TO RELEASE INFORMATION TO NON-IV–D FEDERAL, STATE, AND TRIBAL PROGRAMS—Continued

Authority	Authorized purpose of request	Authorized person/program	Authorized information returned	Limitations
Sections 453A(h)(2) and 1137 of the Act—State Directory of New Hires.	Income and eligibility verification purposes of designated programs.	State agencies administering title IV–A, Medicaid, unemployment compensation, food stamps, or other State programs under a plan approved under title I, X, XIV, or XVI of the Act.	SDNH information: Individual's name, address and SSN; employer's name, address, and Federal employer identification number.	

IV. Regulatory Review**A. Paperwork Reduction Act**

Section 302.35(c) contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families submitted a copy of this section to the Office of Management and Budget (OMB) for its review. We received only one comment regarding the attestation; therefore in the final rule have not revised any language in § 307.13 relating to attestation.

1. *Comment:* One commenter noted that the Paper Reduction Act estimate of 702 hours grossly underestimates the time needed to complete the requirements of these proposed regulations. Requiring State IV–D agencies to independently verify NDNH and FCR hits requires a tremendous amount of paperwork, time, and effort.

Response: The regulation does not require independent verification. It sets forth the conditions for the release of information that the State would not be able to release for non-IV–D purposes otherwise. If the information has not been independently verified, it may not be released for non-IV–D purposes or to persons not specified in section 453 of the Act.

B. Regulatory Flexibility Analysis

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

C. Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This

regulation responds to State requests for guidance on data privacy issues.

The primary purpose of this regulation is to clarify requirements for safeguarding child support enforcement information by consolidating various statutory requirements on disclosure and safeguarding of information into a regulatory framework. There are no appreciable costs related to this regulation as the relevant statutory requirements have been in place for many years and the regulation substantially reflects current operating practices.

D. Unfunded Mandates Reform Act of 1995

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

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

We have determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

E. Congressional Review

This rule is not a major rule as defined in 5 U.S.C. chapter 8.

F. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This Office has reviewed and determined that these regulations protect the confidentiality of information contained in the records of State child support enforcement agencies and will not have an impact on family well being as defined in the legislation.

G. Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implication as defined in the Executive order.

List of Subjects**45 CFR Part 302**

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

45 CFR part 303

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

45 CFR Part 307

Child support, Grant programs/social programs, computer technology,

Reporting and recordkeeping requirements.

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

Dated: April 23, 2008.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

Approved: June 23, 2008.

Michael O. Leavitt,

Secretary of Health and Human Services.

■ Accordingly, the Department of Health and Human Services amends title 45 chapter III of the Code of Federal Regulations as follows:

PART 302—STATE PLAN REQUIREMENTS

■ 1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

■ 2. Section 302.35 is revised to read as follows:

§ 302.35 State parent locator service.

The State plan shall provide as follows:

(a) *State PLS.* The IV–D agency shall maintain a State PLS to provide locate information to authorized persons for authorized purposes.

(1) *For IV–D cases and IV–D purposes by the IV–D agency.* The State PLS shall access the Federal PLS and all relevant sources of information and records available in the State, and in other States as appropriate, for locating custodial parents, noncustodial parents, and children for IV–D purposes.

(2) *For authorized non-IV–D individuals and purposes—*

(i) The State PLS shall access and release information authorized to be disclosed under Section 453(a)(2) of the Act from the Federal PLS and, in accordance with State law, information from relevant in-state sources of information and records, as appropriate, for locating custodial parents, noncustodial parents, and children upon request of authorized individuals specified in paragraph (c) of this section, for authorized purposes specified in paragraph (d) of this section.

(ii) The State PLS shall not release information from the computerized support enforcement system required under part 307 of this chapter, IRS information, or financial institution data match information, nor shall the State PLS forward a non-IV–D request to another State IV–D agency.

(iii) The State PLS need not make subsequent location attempts if locate efforts fail to find the individual sought unless a new request is submitted.

(b) *Central State PLS requirement.*

The IV–D program shall maintain a central State PLS to submit requests to the Federal PLS.

(c) *Authorized persons.* The State PLS shall accept requests for locate information only from the following authorized persons:

(1) Any State or local agency or official providing child and spousal support services under the State plan;

(2) A court that has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving assistance under title IV–A of the Act only if the individual:

(i) Attests that the request is being made to obtain information on, or to facilitate the discovery of, any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations;

(ii) Attests that any information obtained through the Federal or State PLS shall be used solely for these purposes and shall be otherwise treated as confidential;

(iii) Provides evidence that the requestor is the parent, legal guardian, attorney, or agent of a child not receiving assistance under title IV–A, and if an agent of such a child, evidence of a valid contract that meets any requirements in State law or written policy for acting as an agent and, if a parent, attestation that he or she is the resident parent.

(iv) Pays the fee required for Federal PLS services under section 453(e)(2) of the Act and § 303.70(f)(2)(i) of this chapter, if the State does not pay the fee itself. The State may also charge a fee to cover its costs of processing the request, which must be as close to actual costs as possible, so as not to discourage requests to use the Federal PLS. If the State itself pays the fee for use of the Federal PLS or the State PLS in a non-IV–D case, Federal financial participation is not available in those expenditures.

(4) Authorized persons as defined in § 303.15 of this chapter in connection with parental kidnapping, child custody or visitation cases; or

(5) A State agency that is administering a program operated under

a State plan under titles IV–B or IV–E of the Act.

(d) *Authorized purposes for requests and scope of information provided.* The State PLS shall obtain location information under this section only for the purposes specified in paragraphs (d)(1) and (d)(2) of this section.

(1) *To locate an individual with respect to a child in a IV–D, non-IV–D, IV–B, or IV–E case.* The State PLS shall locate individuals for the purpose of establishing parentage, or establishing, setting the amount of, modifying, or enforcing child support obligations or for determining who has or may have parental rights with respect to a child. For these purposes, only information available through the Federal PLS or the State PLS may be provided. This information is limited to Social Security Number(s), most recent address, employer name and address, employer identification number, wages or other income from, and benefits of, employment, including rights to, or enrollment in, health care coverage, and asset or debt information.

(2) *To locate an individual sought for the unlawful taking or restraint of a child or for child custody or visitation purposes.* The State PLS shall locate individuals for the purpose of enforcing a State law with respect to the unlawful taking or restraint of a child or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act. For this purpose, only the information available through the Federal PLS or the State PLS may be provided. This information is limited to most recent address and place of employment of a parent or child.

(e) *Locate information subject to disclosure.* Subject to the requirements of this section and the privacy safeguards required under section 454(26) of the Act and the family violence indicators under section 307.11(f)(1)(x) of this part, the State PLS shall disclose the following information to authorized persons for authorized purposes,

(1) Federal PLS information described in sections 453 and 463 of the Act; and

(2) Information from in-state locate sources.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

■ 2. Revise § 303.3 to read as follows:

§ 303.3 Location of noncustodial parents in IV-D cases.

(a) *Definition.* For purposes of this section, *location* means obtaining information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a IV-D case.

(b) For all cases referred to the IV-D program for IV-D services because of an assignment of support rights or cases opened upon application for IV-D services under § 302.33 of this chapter, the IV-D program must attempt to locate all noncustodial parents or their sources of income and/or assets when location is needed to take a necessary action. Under this standard, the IV-D program must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps, and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the noncustodial parent, current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records, if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records and other sources;

(2) Establish working relationships with all appropriate agencies in order to use locate resources effectively;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate IV-D cases to the IV-D program of any other State, in accordance with the requirements of § 303.7 of this part. The IV-D program of such other State shall follow the procedures in paragraphs (b)(1) through (b)(3) of this section for such cases, as necessary, except that the responding State is not required to access the Federal PLS;

(5) Repeat location attempts in cases in which previous attempts to locate noncustodial parents or sources of income and/or assets have failed, but adequate identifying and other

information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources, but must include

accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

(6) Have in effect safeguards, applicable to all confidential information handled by the IV-D program, that are designed to protect the privacy rights of the parties and that comply with the requirements of sections 454(26) and 454A(d) and (f) of the Act and §§ 303.21 and 307.13.

(c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

■ 4. Section 303.20 is amended by revising paragraph (b)(7) as follows:

§ 303.20 Minimum organizational and staffing requirements.

(b) * * *

(7) Operation of the State PLS as required under §§ 302.35, 303.3, and 303.70 of this chapter.

* * * * *

■ 5. Section 303.21 is added to read as follows:

§ 303.21 Safeguarding and disclosure of confidential information.

(a) *Definitions*—(1) *Confidential information* means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information.

(2) *Independent verification* is the process of acquiring and confirming confidential information through the use of a second source. The information from the second source, which verifies the information about NDNH or FCR data, may be released to those authorized to inspect and use the information as authorized under the regulations or the Act.

(b) *Scope.* The requirements of this section apply to the IV-D agency, any other State or local agency or official to whom the IV-D agency delegates any of the functions of the IV-D program, any

official with whom a cooperative agreement as described in § 302.34 of this part has been entered into, and any person or private agency from whom the IV-D agency has purchased services pursuant to § 304.22 of this chapter.

(c) *General rule.* Except as authorized by the Act and implementing regulations, an entity described in paragraph (b) of this section may not disclose any confidential information, obtained in connection with the performance of IV-D functions, outside the administration of the IV-D program.

(d) *Authorized disclosures.* (1) Upon request, the IV-D agency may, to the extent that it does not interfere with the IV-D agency meeting its own obligations and subject to such requirements as the Office may prescribe, disclose confidential information to State agencies as necessary to carry out State agency functions under plans or programs under title IV (including tribal programs under title IV) and titles XIX, or XXI of the Act, including:

(i) Any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and

(ii) Information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child under circumstances which indicate that the child's health or welfare is threatened.

(2) Upon request, the IV-D agency may disclose information in the SDNH, pursuant to sections 453A and 1137 of the Act for purposes of income and eligibility verification.

(3) Authorized disclosures under paragraph (d)(1) and (2) of this section shall not include confidential information from the National Directory of New Hires or the Federal Case Registry, unless authorized under § 307.13 of this Chapter or unless it is independently verified information. No financial institution data match information may be disclosed outside the administration of the IV-D program and no IRS information may be disclosed, unless independently verified or otherwise authorized in Federal statute. States must have safeguards in place as specified in section 454A(d) and (f) of the Act.

(e) *Safeguards.* In addition to, and not in lieu of, the safeguards described in § 307.13 of this chapter, which governs computerized support enforcement systems, the IV-D agency shall establish appropriate safeguards to comply with the provisions of this section. These safeguards shall also include prohibitions against the release of

information when the State has reasonable evidence of domestic violence or child abuse against a party or a child and that the disclosure of such information could be harmful to the party or the child, as required by section 454(26) of the Act, and shall include use of the family violence indicator required under

§ 307.11(f)(1)(x) of this chapter.

(f) *Penalties for unauthorized disclosure.* Any disclosure or use of confidential information in violation of the Act and implementing regulations shall be subject to any State and Federal statutes that impose legal sanctions for such disclosure.

6. Revise § 303.70 to read as follows:

§ 303.70 Procedures for submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (Federal PLS).

(a) The State agency will have procedures for submissions to the State PLS or the Federal PLS for the purpose of locating parents, putative fathers, or children for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations; or for the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act.

(b) Only the central State PLS may make submittals to the Federal PLS for the purposes specified in paragraph (a) of this section.

(c) All submittals shall be made in the manner and form prescribed by the Office.

(d) All submittals shall contain the following information:

(1) The parent's or putative father's name;

(2) The parent's or putative father's Social Security Number (SSN). If the SSN is unknown, the IV-D program must make reasonable efforts to ascertain the individual's SSN before making a submittal to the Federal PLS; and

(3) Any other information prescribed by the Office.

(e) The director of the IV-D agency or his or her designee shall attest annually to the following:

(1)(i) The IV-D agency will only obtain information to facilitate the discovery of any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or for determining who has or may have

parental rights with respect to a child, or in accordance with section 453(a)(3) of the Act for enforcing a State law with respect to the unlawful taking or restraint of a child, or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act.

(ii) The IV-D agency will only provide information to the authorized persons specified in sections 453(c) or 463(d) of the Act and § 302.35 of this chapter.

(2) In the case of a submittal made on behalf of a resident parent, legal guardian, attorney or agent of a child not receiving assistance under title IV-A, the IV-D agency must verify that the requesting individual has complied with the provisions of § 302.35 of this chapter.

(3) The IV-D agency will treat any information obtained through the Federal PLS and SPLS as confidential and shall safeguard the information under the requirements of sections 453(b), 453(l), 454(8), 454(26), and 463(c) of the Act, § 303.21 of this part and instructions issued by the Office.

(f)(1) The IV-D agency shall reimburse the Secretary for the fees required under:

(i) Section 453(e)(2) of the Act whenever Federal PLS services are furnished to a resident parent, legal guardian, attorney or agent of a child not receiving assistance under title IV-A of the Act;

(ii) Section 454(17) of the Act whenever Federal PLS services are furnished in parental kidnapping and child custody or visitation determination;

(iii) Section 453(k)(3) of the Act whenever a State agency receives information from the Federal PLS pursuant to section 453 of the Act.

(2)(i) The IV-D agency may charge an individual requesting information, or pay without charging the individual, the fees required under sections 453(e)(2), 453(k)(3) or 454(17) of the Act except that the IV-D agency shall charge an individual specified in section 453(c)(3) of the Act the fee required under section 453(e)(2) of the Act

(ii) The IV-D agency may recover the fee required under section 453(e)(2) of the Act from the noncustodial parent who owes a support obligation to a family on whose behalf the IV-D agency is providing services and repay it to the individual requesting information or itself.

(iii) State funds used to pay the fee under section 453(e)(2) of the Act are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(3) The fees referenced in paragraph (f)(1) of this section shall be in an amount determined to be reasonable payment for the information exchange.

(4)(i) If a State fails to transmit the fees charged by the Office under this section, the services provided by the Federal PLS in cases subject to the fees may be suspended until payment is received.

(ii) Fees shall be transmitted in the amount and manner prescribed by the Office in instructions.

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS IN OPERATION AFTER OCTOBER 1, 1997

■ 1. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

■ 2. Amend § 307.13 by revising paragraph (a) to read as follows:

§ 307.13 Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

* * * * *

(a) *Information integrity and security.* Have safeguards protecting the integrity, accuracy, completeness of, access to, and use of data in the computerized support enforcement system. These safeguards shall include written policies concerning access to data by IV-D agency personnel, and the sharing of data with other persons to:

(1) Permit access to and use of data to the extent necessary to carry out the State IV-D program under this chapter;

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

(3) Permit exchanging information with State and Tribal agencies administering programs under titles IV, XIX, and XXI of the Act, to the extent necessary to carry out those State and Tribal agency responsibilities under such programs in accordance with section 454A(f)(3) of the Act, and to the extent that it does not interfere with IV-D program meeting its own obligations.

(4) Prohibit the disclosure of NDNH, FCR, financial institution, and IRS information outside the IV-D program except that:

(i) IRS information is restricted as specified in the Internal Revenue Code;

(ii) Independently verified information other than financial institution information may be released to authorized persons;

(iii) NDNH and FCR information may be disclosed without independent verification to IV-B and IV-E agencies

for the purposes of establishing parentage or establishing parental rights with respect to a child; and

(iv) NDNH and FCR information may be disclosed without independent verification to IV-A agencies for the purpose of assisting States to carry out

their responsibilities of administering the Title IV-A programs.

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