215(e) of the Federal Power Act for the purpose of directing the Electric Reliability Organization or the applicable Regional Entity to provide such information as is necessary to implement Section 215(e)(2) of the Federal Power Act (16 U.S.C. 824o(e)(2)) pursuant to § 39.2 and Part 40 of this chapter.

* * * * *

§ 375.311 [Amended]

■ 3. In § 375.311 remove paragraphs (u) and (v).

[FR Doc. 2014–03432 Filed 2–18–14; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 619

RIN 1205–AB64

Federal-State Unemployment Insurance (UI) Program; Data Exchange Standardization as Required by Section 2104 of the Middle Class Tax Relief and Job Creation Act of 2012

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor's (Department's) Employment and Training Administration (ETA) issues this final rule to designate in regulation data exchange standards, developed in consultation with an interagency work group established by the Office of Management and Budget (OMB), for Unemployment Insurance (UI) administration, as required by amendments to Title IX of the Social Security Act (SSA) made by the Middle Class Tax Relief and Job Creation Act of 2012 (the Act). These regulations establish data exchange standards for three categories of information: real-time applications on the Interstate Connection Network (ICON); the State Information Data Exchange System (SIDES); and implementation of the standards identified for ICON and SIDES in major Information Technology (IT) modernization projects to upgrade UI Benefits and Tax systems by State Workforce Agencies (SWAs) using Federal funds.

DATES: *Effective date:* The rule will take effect on March 21, 2014. The Office of Management and Budget has pre-approved the information collection requirements contained in this rule under the Paperwork Reduction Act and has assigned them control number 1205–0510.

FOR FURTHER INFORMATION CONTACT: Gay M. Gilbert, Administrator, Office of Unemployment Insurance, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4524, Washington, DC 20210; telephone (202) 693–3029 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The preamble to this final rule is organized as follows:

I. Background—provides a brief description of the development of the rule.
II. Summary of the Comments—provides an overview of the comments received.
III. Section-by-Section Review—summarizes and discusses the regulations.
IV. Administrative Information—sets forth the applicable regulatory requirements.

I. Background

On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act. Section 2104 of the Act amends Title IX, SSA (42 U.S.C. 1101 *et seq.*) by adding a new section 911, which requires the Department to issue rules, developed in consultation with an interagency workgroup established by the OMB, that establish data exchange standards for certain functions related to administration of the UI [1] program. Before enactment of this requirement for data exchange standardization, the Department had been a proponent of and strong advocate for the use of open source technologies and data exchange standards in the development of IT systems supporting critical UI functions (such as ICON and SIDES), and of SWAs' overall UI IT modernization efforts. Section 911, SSA, contains two major subsections, (a) and (b), each of which requires data exchange standards; these requirements are discussed in detail below.

Section 911(a)(1), SSA, requires that the Secretary of Labor ''shall, *by rule,* designate a data exchange standard for *any* category of information required under title III [42 U.S.C. 501 *et seq.*], title XII [42 U.S.C. 1401 *et seq.*], or this title [IX] [42 U.S.C. 1101 *et seq.*].'' 42 U.S.C. 1111(a)(1) (Emphasis added.) The Department explained in the Notice of Proposed Rulemaking (NPRM), published in 78 FR 12655, Feb. 25, 2013, that this statutory language allows the Department to identify any category of information under the specified titles, by rule, for which to establish a data exchange standard. Section 911(b)(1), SSA, requires that the Secretary of Labor ''shall, *by rule,* designate data exchange standards to govern the reporting required under [the same specified titles].'' (Emphasis added.) 42 U.S.C. 1111(b)(1). This rule establishes data exchange standards for information required under section 303(a)(1), SSA, that meet the requirements of both sections 911(a)(1) and 911(b)(1), SSA.

Section 303(a)(1), SSA, commonly known as the ''methods of administration'' requirement, provides that State law, as a condition of the State receiving Unemployment Compensation (UC) administrative grants, must include ''such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.'' The Department chose to establish data exchange standards for information required under section 303(a)(1), SSA, because this section is the foundational statutory authority for the Department's guidance to States on the administration of the UI program, including guidance on program operations and reporting requirements.

In the NPRM, the Department indicated that it did not propose establishing data exchange standards for categories of information under Titles IX and XII, SSA, because they provided fewer opportunities for establishment of data exchange standards that would benefit the UI system broadly, given that their focus is primarily on Unemployment Trust Fund (UTF) management issues. Title IX establishes the account structure for the UTF, and Title XII establishes the processes for States to obtain advances if their States' accounts in the UTF are depleted. As discussed in more detail in the Comment Section below in response to the comment received on the NPRM, the Department will continue to review all UI reporting and determine the application of appropriate data exchange standards, where feasible. In this rule, the Department addresses the data exchange systems that are most immediately well-positioned to facilitate implementation of the data exchange standard.

To meet the requirements of section 911, SSA, the Department is designating in this final rule that eXtensible Markup

[1] The Department's Office of Unemployment Insurance uses the term Unemployment Compensation (UC) when referring to UC benefits paid or UC laws, and the term Unemployment Insurance (UI) to refer to the UI program, administration, and operations.

Language (XML)[2] be the data exchange standard for two systems that support the reporting of data and information for two core UI administrative functions: (1) employer reporting of information requested by SWAs to support eligibility determinations (SIDES); and (2) the reporting and exchange of wage information among the States that also supports determination of eligibility for benefits (ICON). XML is a markup language that defines a set of rules for encoding documents in a format designed to structure, store and transport data. XML data are stored in plain text format that is both human-readable and machine-readable. Use of XML also provides for a software- and hardware-independent method of exchanging data over incompatible applications or systems over the Internet.

Section 911(a)(2), SSA, requires that the data exchange standard implemented in this rulemaking ''to the extent practicable, be nonproprietary and interoperable.'' Section 911(b)(2), SSA, also requires that the data exchange standards implemented in this rulemaking ''to the extent practicable incorporate a widely accepted, nonproprietary, searchable, computer-readable format,'' and ''be capable of being continually upgraded as necessary.'' Section 911(b)(3), SSA, specifically requires that this rule, ''to the extent practicable, incorporate existing nonproprietary standards, such as the eXtensible Markup Language.'' The data exchange standards established in these regulations mandate the use of XML to meet the requirements of sections 911(a) and (b), SSA.

XML[3] provides an interoperable standard framework using common computer languages and standard formats and protocols to manage certain functions or communications. Gaining interoperability among the Department and 53 States and territories with different IT infrastructure and different program parameters (State UI programs have differing eligibility requirements and processes for supporting those requirements) is challenging. Therefore, the Department focused these regulations on core functions and reporting requirements that are truly common among the States.

Finally, section 911(a)(3)(A), SSA, requires that for data exchange reporting standards, the rule, to the extent practicable, incorporate interoperable standards developed and maintained by an international voluntary consensus standards body. The XML standard herein designated meets this requirement as it is recognized by the World Wide Web Consortium, an international voluntary consensus standards body. The rule also meets the requirement of incorporating standards developed and maintained by intergovernmental partnerships like the National Informational Exchange Model (NIEM) referenced in section 911(a)(3)(B), SSA. XML is a data exchange standard recognized by NIEM. The standard to be considered under Section 911(a)(3)(C), SSA, requires incorporation, to the extent practicable, of ''interoperable standards developed and maintained by Federal entities with authority over contracting and financial assistance, such as the Federal Acquisition Regulations Council.'' This requirement applies to contracting and procurement processes and is not applicable to UI processes.

In accordance with these provisions, this final rule implements the following data exchange standards:

- Under section 911(a), SSA, the Department designates XML as the data exchange standard for the real-time applications[4] of ICON;
- Under section 911(a), SSA, the Department designates XML as the standard for the SIDES data exchange modules;
- Under section 911(b), SSA, the Department designates XML as the data exchange standard to govern reporting of information shared through SIDES; and
- Under section 911(a), SSA, the Department designates XML as the data exchange standard for real-time applications of ICON and SIDES data exchange modules in association with major IT modernization projects using Federal funds.

By publishing this final rule, the Department does not foreclose the possibility of later establishing additional data exchange standards by regulation, as technological and other advances make it feasible and appropriate. The Department will explore on an ongoing basis other functions where data exchange standards would be valuable to the UI program and as it relates to shared data exchange with other Federal agencies.

ICON

ICON is used to implement sections 3304(a)(9)(A) and (B) of the Federal Unemployment Tax Act (FUTA), providing for interstate and combined-wage claims.[5] ICON enables States to request, submit, and receive much of the information necessary to establish claims (as identified below) and determine eligibility. The requirement to pay UC ''when due'' under section 303(a)(1), SSA, includes the timeliness of these payments. Interstate and combined wage claims are more complex to administer since they require communication and transmission of information between States or between a State and a Federal agency. To ensure that these claims are paid ''when due,'' the Department supports development and maintenance of ICON. ICON is a secure multi-purpose telecommunications network that supports the transfer of data among the SWAs needed for critical program functions, including:

- Interstate Benefits/Combined-Wage Claims;
- Unemployment Compensation for Federal Civilian Employees and Unemployment Compensation for Ex-Servicemembers programs;
- The Wage Record Interchange System, which allows SWAs to obtain wage data for program performance purposes of individuals who have participated in workforce investment programs in SWAs;
- The UI Inquiry data exchange with the Social Security Administration (Social Security) that enables SWAs to validate Social Security Numbers (SSNs) with Social Security; and
- The Health Coverage Tax Credit that enables a SWA to transmit information to the Internal Revenue Service about individuals eligible for help paying for their health insurance coverage.

[2] XML is a nonproprietary, searchable, computer-readable format, and has the capacity to be upgraded continually, as necessary. Interoperability helps information technology systems more readily interface to carry out shared functions and manage communications.

[3] The use of the term ''XML'' means XML and any XML-based markup language(s) that defines a set of rules for encoding documents and/or data in a format that is both human-readable and machine-readable. The term ''XML'' encapsulates the provisions specified in newly added section 911, SSA.

[4] ICON applications are available in real-time and batch mode. States vary in the use of real-time applications versus the batch mode. The batch mode allows for processing of multiple requests at a scheduled time instead of immediate ''real-time'' processing.

[5] Section 3304(a)(9)(A), (FUTA) requires, as a condition of the Secretary's certification of a State law under FUTA, that ''compensation shall not be denied or reduced to an individual solely because he files a claim in another State . . . or because he resides in another State . . . at the time he files a claim for unemployment compensation.'' Section 3304(a)(9)(B), FUTA, also requires as a condition of the Secretary's certification that ''the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the State unemployment compensation law of other States. . . . ''

The Department establishes in this final rule that XML be used as the data exchange standard under section 911(a), SSA, for a subset of these functions due to both State and ICON capacity to adopt standards for some of these functions at this time. In relation to these chosen functions, ICON currently supports the following applications in real-time allowing for States to use XML standards for these functions. These are applications currently used by some SWAs to support the processing of all UC claims:

- Interstate Wages and Benefits Inquiries/Responses, which supports online transmission of interstate wages and benefits inquiries and responses between SWAs;
- Withdrawn/Invalid Claims, which allows for the posting and viewing of withdrawn or invalid claim information for SWAs; and
- State Identification Inquiry, which allows SWAs to inquire about wages reported to other SWAs by SSN.

Currently, seven SWAs are involved in modernizing some of their ICON applications and it is not practical to require all States to comply with this standard immediately. In this final rule, the Department requires that all SWAs using real-time ICON applications comply with the XML data exchange standard no later than September 30, 2018. A SWA may request an extension of the September 2018 deadline if it demonstrates that resources are not available to meet this requirement. These requests must be submitted in writing to the Administrator of the Office of Unemployment Insurance no later than 6 months before the deadline; requests will be reviewed and decided within 30 days.

SIDES

SIDES is necessary to effectuate the Standard for Claim Determinations—Separation Information, codified in regulation at 20 CFR Part 625 Appendix B. This standard is based significantly on the ''methods of administration'' requirement in section 303(a)(1), SSA, and includes a requirement that a State promptly obtain information from the worker, employer, or other source that is sufficient to reasonably insure payment of UC when due. For this reason, the Department supports development and maintenance of SIDES, which enables States to exchange information with employers electronically, thereby markedly improving the timeliness and accuracy of the employer-provided information about the reasons individuals separated from employment.

SIDES is an automated information exchange and reporting system to standardize SWAs' delivery of information to employers and collection of information by SWAs from employers and third-party administrators (TPAs). In FY 2010, the first format of SIDES for exchange of employee separation information was implemented. This exchange of information with employers or their TPAs on the circumstances underlying individual UC claimants' job separations will reduce UC payments to ineligible claimants, yield administrative cost savings to both employers and taxpayers, and promote more timely benefit determinations. Currently, 36 SWAs and three TPAs are participating in the SIDES effort. In FY 2011, the SIDES earnings verification module was implemented. The addition of the earnings verification exchange allows SWAs and employers to more quickly and accurately verify when UC claimants return to work, thus reducing the leading cause of UC overpayments: claimants' receipt of UC while employed. In FY 2013, the SIDES module providing information on monetary and potential charges to the employer's account was implemented. This module allows SWAs to inform employers more quickly of potential charges to their accounts so that employers can appeal these charges expeditiously. If an employer appeals the charges, additional fact-finding of the claim can be conducted before additional benefits are paid to claimant thus preventing improper payments.

SIDES is managed by the National Association of State Workforce Agencies (NASWA [6]) which contracts with a vendor for its maintenance, support, and operations. The Department has provided specific funding to State consortia and SWAs for development, maintenance, and operation of SIDES. State consortia are groups of States collaborating to jointly establish a project team to oversee the design, development and implementation of an IT solution that will be shared across the States. The Department recently funded a consortium of States to oversee the development of new SIDES data exchange modules to allow SWAs to notify employers and TPAs of benefits charges to their accounts and of non-monetary determinations. SWAs, participating in the SIDES consortia, identify and help prioritize new SIDES modules to be developed and direct these funds to NASWA for the development of these modules. All SWAs using SIDES modules provide administrative funding to NASWA for the continued operations of SIDES.

The Department continues to facilitate the expansion and enhancement of the functionality and use of SIDES as a vital tool for SWAs for the prevention and detection of improper payments, and has provided supplemental funding to a State consortium for the development of additional data exchange modules. These modules include:

- *UC Benefit Charge Notices.* This enhancement will make it possible for SWAs to provide employers notice of actual (as opposed to potential as discussed above) benefit charges to their accounts electronically rather than by paper and mail. This permits a quicker delivery and review by the employer and the ability to reply electronically if the charges are questionable. This expedited information exchange can detect potential improper payments earlier, particularly those related to identity theft and employees that return to work and continue to collect benefits.
- *Non-Monetary Determinations Exchange.* This enhancement will notify employers electronically, rather than on paper, of SWA decisions on the eligibility of their former employees when issues arise about whether the employees quit or were terminated for cause. This will improve the timeliness of employer appeals and allow for quicker appeal decisions, halting improper payments faster if the employer prevails in the appeal.

Additionally, several other data exchange modules are under consideration for the expansion of SIDES including one for the exchange of Appeals Decisions. The XML standard will apply to these additional data exchange modules as well.

The final rule designates a data exchange standard under section 911(a), SSA, to apply to the SIDES data exchange modules and designates a standard under section 911(b), SSA, to govern reporting of information through SIDES data exchange modules.

Major IT Modernization of UI Benefits and Tax Systems

For the purpose of this regulation, a major IT Modernization of UI Benefits and Tax systems includes conversion, re-engineering, rewriting, or transferring of an existing system to a modernized framework such as transferring a process from mainframe operations to web-based operations, converting to modern computer programming languages, or upgrading software

[6] A definition for NASWA was included in the NPRM as part of the proposed rule. Since this term is not included in this regulation, the proposed definition has been deleted in this final rule. This deletion of the definition of NASWA is the only change made to the final rule when compared to the proposed rule in the NPRM.

libraries, protocols, or hardware platform and infrastructure. As the Department provides funding to States to modernize their IT systems, the opportunity exists to use new data exchange standards that improve operations of the UI system as a whole and may further enable improved data exchanges with other States and Federal agencies.

The Department facilitates SWAs' efforts to modernize IT systems supporting their UI programs by providing funding for administration and operations, and appropriate technical assistance. While the Federal-State structure of the UI program places primary responsibility for its administration on the States, the Department provides periodic supplemental funding opportunities for IT modernization activities. In addition, Congress periodically provides special distributions of administrative UI funding to States.

Federal funds for UI modernization efforts come primarily from three sources: (1) supplemental budget funds that are designated by the Department for State IT modernization efforts, (2) State UI administration funding, and (3) special distributions. State administration funding primarily consists of State UI operations funds (an administrative grant awarded by the Department at the beginning of each fiscal year). Recent special distributions to States, under section 903, SSA, include those provided under the Job Creation and Worker Assistance Act of 2002 funds (distributed under the Reed Act, a mechanism by which the Federal government transfers surplus UI funds to States) and American Recovery and Reinvestment Act funds (an economic stimulus package enacted in February 2009). Also, since 2009, the Department has provided supplemental funding to State consortia to develop jointly functional requirements and development of modernized UI IT Benefits and/or Tax systems. One of the requirements was that the technology tools developed use open source components to the extent feasible, be transferable, and be capable of being shared by multiple SWAs. The goal is for multiple SWAs to share common systems/tools that accommodate each SWA's specific needs. Each of the consortia has its State leadership engaged in the process and soliciting vendors to assist with the system design and development efforts.

This final rule requires that SWAs, when using Federal funds to modernize their UI systems, use XML as a data exchange standard when developing the functionality to interface with ICON, to implement SIDES and the reporting of information through SIDES. This requirement will potentially further accelerate State adoption of this standard for both functions. The Department strongly encourages SWAs, to the extent feasible, to begin conforming to the XML standard for any major UI IT modernization projects already underway.

Effective Date

Section 2104(b)(1) of the Act requires that a final rule to be issued ''after public comment, within 24 months after such date of enactment.'' Section 2104(b)(2) of the Act requires that a proposed rule under section 911(b), SSA, will ''become effective with respect to reports required in the first reporting period, after the effective date of the final rule referred to in paragraph (1) of this subsection.''

Accordingly, this final rule requires that the data exchange standard for SIDES, under both sections 911(a) and (b), SSA, become effective 30 days after publication of this final rule. States implementing new data exchange modules after that date will use XML as the data exchange standard.

Additionally, this final rule establishes September 30, 2018, as the date by which SWAs must comply with the data exchange standard for ICON, in accordance with section 911(a), SSA. This will allow States to begin implementing the standard as soon as practicable, while still providing enough advance time to account for the current technology capacity of States and the fact that many States will need to make substantial changes to their technology systems to implement XML for their ICON exchanges.

Finally, the effective date of designation of XML as the data exchange standard for SIDES data exchange modules and for the real-time ICON applications, in accordance section 911(a), SSA, is 30 days after publication of this final rule.

II. Summary of the Comments

The Department received only one comment in response to the NPRM, which was from the Chairman and six Members of the Subcommittee on Human Resources, U.S. House of Representatives, Committee on Ways and Means. This comment generally supported the rulemaking; however, it also detailed two particular concerns about the NPRM. First, the comment encouraged the Department to continue to review program data beyond the specific data exchanges identified in this rule for standardization including data exchanges under Titles IX and XII. Second, the comment specifically indicated that the Department should explore the standardization of weekly UI claims data. Finally, the comment recognized the Department's commitment to working with other Federal agencies to identify standards that could improve interagency data exchanges. The Department addresses these concerns in the following paragraphs.

First, the commenters state that ''as authors of this provision [the Act], we intended 'any' to cover *all* categories of information.'' In other words, the commenters asserted the Department should interpret data exchange standardization to cover all categories of information. The comment states ''we recognize that the effort to move a standardized system will require upfront investment of time and effort.'' The comment also noted that ''[t]his is an iterative process and we look forward to working together to achieve success.''

The Department appreciates that the commenters recognize that extending data exchange standardization to all types of reporting and information data exchanges is an enormous effort that takes time; it is an iterative and evolutionary process. The Department recognizes that the statutory language regarding ''any'' category of information could be interpreted as the commenters assert. The language is ambiguous and therefore the Department interpreted it in a manner to make the implementation of the statute feasible. The Department will continue to review all UI reporting and determine the application of appropriate data exchange standards, where feasible. In the UI program, this process must be accompanied by considerable consultation and partnership from the States. As we noted in the NPRM, 78 FR 12656, Feb. 25, 2013, States vary widely in their IT infrastructure, with many States continuing to operate antiquated and inflexible systems. In addition, the IT infrastructure in States has been significantly challenged over the past several years due to the complexity of new Federal UI programs such as the Emergency Unemployment Compensation program, and more recently as a result of sequestration. The fact of this varying State IT capacity requires consideration of priorities, funding availability, and timing constraints when it comes to data exchange standardization.

The Department addresses, in this rule the data exchanges that are most immediately well-positioned to facilitate implementation of new data exchange standardization. For example, the ICON network has completed the

implementation of the XML data exchange for the ''real time'' applications that are used by SWAs. The Department wants to encourage SWAs to transition to the XML data exchange standards for these ''real time'' applications and these regulations provide such an opportunity. In addition, the SIDES data exchange tool is a recent development and SWAs are in the process of adopting this tool to facilitate the exchange of information between SWAs and employers and third party administrators. Although the designation of a XML standard has started with these specific data exchanges, the Department will continue to review other data exchanges, and reporting requirements for designation of data exchange standards, where feasible. In a May 10, 2013, meeting between the Department and staff members of the House Subcommittee on Human Resources, the committee staff indicated that they were not requesting any specific change to the rule based on this explanation. They asked, and the Department agreed, that it would continue to keep the Committee informed of new opportunities to develop data exchange standards between SWAs and the Department and also between the Department and other Federal agencies.

The comment also noted that the exchanges that deal with the issue of Unemployment Trust Fund reporting under Titles IX and XII could also benefit from data exchange standardization. Most of the data systems on Unemployment Trust Fund reporting are operated by the U.S. Department of Treasury (Treasury). The Department will work with Treasury to explore opportunities for standardizing these data exchanges and reporting under Titles IX and XII.

While developing this rule for data exchange standards, the Department determined that it is neither feasible nor practicable to immediately set standards for all reports under the three titles listed in Section 911(b), SSA. In the NPRM, the Department indicated that imposing data exchange standards for certain reporting for the UI program would be counter-productive and would interfere with the Department's ability to use and analyze the data. For example, State UI agencies currently send data, such as weekly UI claims data, to the Department in a format that enables the Department to store the data in a relational database for purposes of analysis and performance management. The Department noted that if the data were instead required to be received in XML format, pre-processing of the data would be required to store this information within a relational database, thus adding a layer of complexity for the analytical software. That approach would result in unnecessary inefficiency and there would be no benefit to any user of the data.

The comment further stated that while the commenters agreed with the Department's effort to ''avoid unnecessary inefficiencies,'' they do not agree with the Department's ''assertion that there would be no long term benefit gained from including weekly UI claims data in the data exchange standardization effort.''

The Department acknowledges that presenting the data with consistent identification codes and formatting is desirable. The Department plans to conduct a feasibility study on consolidating the State UI reporting infrastructure within the Department's National Office. This process will provide opportunities for updating the format and standards by which these reports are presented to users of the data. With this pending consolidation project, the Department will continue to explore how best to present the data to facilitate greater usability, transferability and transparency. As an interim measure, the Department, where feasible, intends to prioritize the translation and publication of data, including weekly claims data, in an XML format to enable users to better understand the data elements and definitions. These are actions that the Department can take without any further rule making because it does not need involvement by external entities.

Finally, the comment supported the Department's commitment to interagency coordination ''to identify standards that could be applied to improve interagency data exchanges and issue additional regulations.''

The comment also stated that ''[the Subcommittee] look[s] forward to working together to achieve success'' in this respect. The Department appreciates the interest shown by the Committee and intends to continue to work closely with all stakeholders, including the Committee and all Members of Congress, as well as the States, OMB, and other Federal agencies in pursuing opportunities for data exchange standardization. The Department agrees with the Committee on the potential benefits for data exchange standardization.

The Department also notes that if the goal for the UI program and other Federal programs is to advance data exchange standardization as quickly as feasible, it is critical that agencies have flexibility to determine the data exchanges that will produce the best results and the timing for implementation based on issues such as capacity and cost. In addition, the Department also notes that requiring agencies to implement data exchange standards through regulations is extremely cumbersome and may actually inhibit agencies' agility to respond to advances in technology concerning standardization. The Department is willing to work with the Committee to identify alternatives to accelerate data exchange standardization in other areas.

Based on the conversation with Committee staff on May 10, 2013, the Department is making no changes to the regulation as a result of this comment.

III. Section-by-Section Review

Definitions (§ 619.1)

This section establishes definitions of terms used in this rule. Most are self-explanatory; however, of particular note is paragraph (c), which defines XML, the standard designated in this rule to use for data exchange. XML data are stored in plain text format that is both human-readable and machine-readable and provides for a software- and hardware-independent method of exchanging data over incompatible applications or systems over the internet. This definition includes any future upgrades, iterations, or releases of XML-based language. A definition for the NASWA was included in the NPRM as part of the proposed rule. Since this term is not included in this regulation, the proposed definition has been deleted in this final rule. This deletion of the definition of NASWA is the only change made to the final rule when compared to the proposed rule in the NPRM.

Data Exchange Standardization for ICON (§ 619.2)

Paragraph (a) designates XML as the data exchange standard for the real-time ICON applications. These applications are: Interstate Wages and Benefits Inquiries/Responses; Withdrawn/Invalid Claims; and State Identification Inquiry. These applications, used by States, are currently supported by ICON in real-time using two data exchange formats—Extended Binary Coded Decimal Interchange Code (EBCDIC) and Web Services Description Language (WSDL), which is a XML-based language. As stated previously, the Department has selected this sub-set of the applications supported on ICON for applying a data exchange standard because they represent the applications which both ICON and States currently

have capacity to implement. The Department will continue to consider ways to apply data exchange standards to the other ICON functions, but the technology solutions are currently not available. It may be over five years before these new technology solutions can be effectively applied in the ICON environment.

Paragraph (b) requires that all SWAs using real-time ICON applications conform to the XML data exchange standard no later than September 30, 2018. The rule provides that a SWA may request an extension of this deadline if it demonstrates that resources are not available to meet the requirements. The request must be submitted to the Administrator of the Office of Unemployment Insurance no later than 6 months before the deadline, and the request will be approved or denied within 30 days.

ICON is funded by a cooperative agreement between the Department and the State of Maryland. The Maryland Department of Labor, Licensing and Regulation acts as the Department's agent to contract with a vendor for the maintenance, support, and operation of ICON. Beginning in FY 2007, the Department facilitated and later provided funding for the conversion of data exchange formats from EBCDIC to WSDL. EBCDIC is a format specifically used for mainframes and is not an interoperable standard. However, the migration of SWAs from EBCDIC to WSDL is still in its infancy requiring ICON to support a dual environment (Web Services and Mainframe).

A few SWAs currently are in the process of implementing some of the modernized, XML-based real-time applications in conjunction with their efforts to modernize their IT systems or replace outdated systems. The goal of this paragraph is to accelerate State adoption of XML-based real time applications in order to eventually eliminate the need for ICON to manage mainframe applications in addition to the XML-based applications.

The Department will continue to support SWAs' transition to modernized XML-based real-time ICON applications and expects that the data exchange standard in this regulation will accelerate SWAs' adoption of the XML exchange standard. The development of a single environment will result in improved efficiencies and cost savings and allow the Department to more effectively manage the development of future data exchanges and maintenance of resources.

Data Exchange Standardization for SIDES (§ 619.3)

Paragraph (a) designates XML as the data exchange standard for SIDES. Paragraph (b) requires that this standard apply to any Federally-funded SIDES consortium, and any future agents of the Department providing vendor services for the development, maintenance, support and operations of the SIDES. Paragraph (c) designates XML as the data exchange standard to govern the reporting of information through the SIDES data exchange modules. Paragraph (d) denotes when the standard set in paragraph (c) becomes effective.

SIDES uses Web services and the XML data format for the information exchange between the SWAs and employers. The Department is requiring that all SIDES exchanges (current and future), which are developed in whole or part with Department funds, continue to conform to the XML data exchange standard. Additionally, as States, employers, and TPAs chose to implement SIDES or new data exchange modules of SIDES, they must conform to this data exchange standard by application design.

SIDES offers two options for implementation for SWAs and employers: SIDES web services, and SIDES E-Response. Both systems are designed to meet the unique needs of businesses, large and small. For employers with a limited number of UC claims, the SIDES E-Response Web site provides an easy and efficient way to respond to information requests from SWAs. For employers and TPAs that handle a large volume of UC claims information requests, SIDES web services provides an automated, computer-to-computer interface between employers' and TPAs' IT systems and SWA networks.

Data Exchange Standardization for the UI Benefits and Tax Systems (§ 619.4)

Paragraph (a) designates XML as the data exchange standard for the real-time ICON applications and SIDES data exchange modules associated with major IT modernization projects to upgrade UI Benefits and Tax Systems by SWAs using Federal funds. This standard will improve the interoperability of State, Federal, and employer systems that collect and exchange information for UI administrative purposes. Linking data between these systems at the State level will allow for better service delivery and faster eligibility determinations, and should facilitate program integrity efforts.

Paragraph (b) requires that, beginning on the effective date of this regulation, major IT modernization efforts funded by the Department must conform to the XML data exchange standard for the implementation of the real-time ICON applications and the SIDES exchange modules.

IV. Administrative Information

Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' because, although not economically significant under section 3(f) of Executive Order 12866, it raises novel issues of law and policy. The key policy being implemented in this rule is the designation of XML as the data exchange standard for three categories of information: real-time applications on ICON; SIDES; and implementation of the XML standard identified for ICON and SIDES in major IT modernization projects to upgrade UI Benefits and Tax systems by SWAs using Federal funds. Therefore, the Department has submitted this final rule to OMB for review.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. A Federal agency may not conduct or sponsor a collection of information, unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not

display a currently valid OMB control number (44 U.S.C. 3512).

While this final rule imposes no new information collections, §§ 619.2–619.4 would impose formatting requirements for the data exchanges of various UI applications that may impose a burden under the PRA. The Department submitted an information collection request (ICR) to the OMB to obtain PRA approval for the information collection formatting requirements contained in the NPRM. On May 16, 2013, consistent with regulations 5 CFR 1320.11(c), the OMB issued a Notice of Action assigning control number 1205–0510 to the ICR. The OMB did not pre-approve the formatting requirements at that time; instead, the Department was to resubmit the ICR for approval at the final rule stage, after reviewing and responding to any public comments. The substance of the public comment and the Departmental response appears earlier in this preamble. The public comment did not address the PRA burden estimates in the NPRM. Concurrent with publication of this final rule, the Department is resubmitting the request to the OMB for PRA approval. ETA will publish a Notice in the **Federal Register** to announce any final OMB decision on that request.

The burden for the information collection provisions of this final rule can be summarized as follows:

Agency: DOL–ETA.

Title of Collection: Federal-State Unemployment Insurance Program Data Exchange Standardization.

OMB ICR Reference Number Control Number: 1205–0510.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Burden Hours: 6,360.

Total Estimated Annual Other Costs Burden: $1,057,329.

Executive Order 13132: Federalism

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. This final rule is specifically required by the Middle Class Tax Relief and Job Creation Act of 2012.

This rule does not have a substantial direct effect on the current nature of the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the Executive Order. The Department is exercising its existing authority to interpret Federal statutes with regard to States' administration of UI programs. In the Federal-State UI system, States have a great deal of flexibility to design their UC laws and operations as long as they comply with the broad Federal requirements in FUTA and the SSA. This rule implements a new statutory requirement for a uniform data exchange and reporting standard and thus is no different from other UC regulations that interpret Federal law as it applies to State requirements. It simply sets a new standard for data exchanges of information used in the administration of the UI program under Title III of the SSA. The Department consulted with NASWA's Information Technology Support Center and NASWA's UI Committee to discuss the impacts of this rule and identify State application interfaces which will benefit by the implementation of the XML data exchange standard. NASWA agreed with the Department's approach to implement uniform data exchange standards in areas already identified as valuable to the UI system and for applications developed collaboratively with the States.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995. Under the Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any single year. The Department has determined this rule does not include any Federal mandate that may result in increased expenditure by State, local, and Tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Most if not all of the costs of implementing this regulation will be covered by Federal funding.

Plain Language

The Department drafted this final rule in plain language.

Effect on Family Life

The Department certifies that this final rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 12 Stat. 2681) for its effect on family well-being. This provision will not adversely affect the well-being of the nation's families. Therefore, the Department certifies that this rule does not adversely impact family well-being as discussed under section 654 of the Treasury and General Government Appropriations Act of 1999.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

The Department has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification according to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required where the rule ''will not . . . have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(5).

This final rule requires implementation of a data exchange standard that would be used in SIDES and ICON. ICON is used only by States and Federal entities, neither of which qualifies as a small entity under the RFA. SIDES, however, is used by States and by employers, including TPAs, in the private sector. However, because SIDES already uses an XML-based interface, there is no incremental cost to current users. Furthermore, while additional employers and TPAs may adopt SIDES in the future, this rule does not require them to do so, nor does this rule affect their costs if they did. Consequently, this rule will not have a significant economic impact on a substantial number of small entities, and a Regulatory Flexibility Analysis is not required under the RFA.

In addition, this rule does not require review by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 because it will not

result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

As discussed above, the most significant effect of this final rule will be to accelerate action (*e.g.,* the adoption of the real-time XML-based ICON applications) that the Department expects to occur even in the absence of this rule. The noteworthy cost of the final rule is the cost of this acceleration. That is, the rule would change the timing—and therefore the present value—of nominal costs that would have been incurred even in the absence of the rule. These costs will be borne by the State and Federal governments, not by small entities.

List of Subjects in 20 CFR Part 619

Labor, Unemployment Compensation.

For the reasons stated in the preamble, the Department amends 20 CFR chapter V to add part 619 as set forth below:

PART 619—UNEMPLOYMENT COMPENSATION DATA EXCHANGE STANDARDIZATION FOR IMPROVED INTEROPERABILITY

Sec.
619.1 Definitions.
619.2 Data exchange standardization for ICON.
619.3 Data exchange standardization for SIDES.
619.4 Data exchange standardization for the UI Benefits and Tax Systems.

Authority: 42 U.S.C. 1111; Section 2104(b) of Pub. L. 112–96; 42 U.S.C. 1302(a).

§ 619.1 Definitions.

As used in this part—

Administrator of the Office of Unemployment Insurance means the Department's Employment and Training Administration's chief administrative officer directly responsible for the operation of the Unemployment Insurance (UI) program and oversight of the Unemployment Compensation (UC) program and UC laws.

Department means the United States Department of Labor.

eXtensible Markup Language or *XML* means a markup language that defines a set of rules for encoding documents in a format designed to structure, store and transport data between applications or systems over the Internet. This term includes any future upgrades, iterations, or releases of XML-based language.

Federal funds or *Federally-funded* means funds that include, but are not limited to:

(1) Supplemental budget funds that are designated by the Department for State IT modernization efforts;

(2) General State UI administration funding for State program operations (an administrative grant issued by the Department at the beginning of each fiscal year); and

(3) Special UI funding distributions.

Interstate Connection Network or *ICON* means a secure multi-purpose telecommunications network that supports the transfer of data among the SWAs.

Interstate Wages and Benefits Inquiries/Responses means the ICON application which supports online transmission of interstate wages and benefits inquiries and responses between SWAs.

Major IT Modernization Project means conversion, re-engineering, rewriting, or transferring of an existing system to a modernized framework such as transferring a process from mainframe operations to Web-based operations, converting to modern computer programming languages, or upgrading software libraries, protocols, or hardware platform and infrastructure. These are projects to upgrade UI Benefits and Tax Systems by SWAs using Federal funds.

State or *States* refers to, individually or collectively, the 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

State Identification Inquiry means the ICON application which allows SWAs to inquire about wages reported to other SWAs by Social Security Number.

State Information Data Exchange System or *SIDES* means an automated response system used by SWAs to collect claim-related information from employers and third-party administrators.

State unemployment compensation law or *UC law* means the law of a State approved under Section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

State Workforce Agency or *SWA* means the agency of the State charged with the administration of the State's Unemployment Compensation (UC) law.

Unemployment compensation or *UC* means cash benefits payable to individuals with respect to their unemployment, as defined in 26 U.S.C. 3306(h).

Unemployment Insurance or *UI* means the Federal-State system and operations administering and implementing UC law.

Withdrawn/Invalid Claims means the ICON application which allows for the posting and viewing of withdrawn or invalid claim information for SWAs.

§ 619.2 Data exchange standardization for ICON.

(a) XML is the data exchange standard for the real-time ICON applications. These applications are: Interstate Wages and Benefits Inquiries/Responses; Withdrawn/Invalid Claims; and State Identification Inquiry.

(b) All SWAs using real-time ICON applications must comply with this XML data exchange standard no later than September 30, 2018. A SWA may request an extension of this deadline if it demonstrates that resources are not available to meet this requirement. These requests must be submitted in writing to the Administrator of the Office of Unemployment Insurance no later than 6 months before the deadline; requests will be approved or denied within 30 days.

§ 619.3 Data exchange standardization for SIDES.

(a) XML is the data exchange standard for SIDES.

(b) This standard applies to any Federally-funded SIDES consortium, and any future agents of the Department providing vendor services for the development, maintenance, support, and operations of the SIDES, and for any State that adopts SIDES. A SIDES consortium involves a group of two or more States jointly establishing a project team to oversee the design, development, and implementation of a new SIDES data exchange module. As States implement SIDES or new data exchange modules of SIDES, they must conform to this data exchange standard by application design.

(c) XML is designated as the data exchange standard to govern the reporting of information through SIDES data exchange modules. The regulation applies to current SIDES data exchange modules and any future SIDES data exchange modules developed with Federal funds.

(d) The standard designated in paragraphs (a), (b), and (c) of this section is effective March 21, 2014.

§ 619.4 Data exchange standardization for the UI Benefits and Tax Systems.

(a) XML is the data exchange standard for the real time ICON applications set out in § 619.2 and for the SIDES exchanges set out in § 619.3 associated with major IT modernization projects, to

upgrade UI Benefits and Tax Systems by SWAs using Federal funds.

(b) The standard designated in paragraph (a) of this section is effective March 21, 2014.

Eric M. Seleznow,

Acting Assistant Secretary, Employment and Training Administration.

[FR Doc. 2014–03496 Filed 2–18–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 106 and 107

[Docket No. FDA–1995–N–0063 (formerly 95N–0309)]

RIN 0910–AF27

Current Good Manufacturing Practices, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for Infant Formula; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; request for comments; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of February 10, 2014. The document revised our infant formula regulations to establish requirements for current good manufacturing practices, including audits; to establish requirements for quality factors; and to amend FDA's quality control procedures, notification, and record and reporting requirements for infant formula. FDA took the action to improve the protection of infants who consume infant formula products. The document was published with an incorrect docket number. This document corrects that error.

DATES: *Effective Date:* This correction is effective February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3208, Silver Spring, MD 20993, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2014–02148, appearing on page 7934 in the **Federal Register** of February 10, 2014 (79 FR 7934), the following corrections are made:

1. On page 7934, ''FDA–1995–N–0036'' is corrected to read ''FDA–1995–N–0063'' each time it appears.

2. On page 8055, in the second column, ''FDA–1995–N–0036'' is corrected to read ''FDA–1995–N–0063''.

3. On page 8058, in the third column, ''FDA–1995–N–0036'' is corrected to read ''FDA–1995–N–0063''.

Dated: February 13, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03588 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. FDA–1977–N–0222]

Administrative Detention; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: The Food and Drug Administration (FDA) published a document in the **Federal Register** on Friday, March 9, 1979 (44 FR 13239). The document established administrative detention procedures for devices intended for human use believed to be adulterated or misbranded. The document was published with a citation in the first column on page 13240 that subsequently was changed by the Nutrition Labeling and Education Act Amendments of 1993. In addition, the document was published with one typographical error in the first column on page 13241. This document corrects these errors.

DATES: This correction is effective February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Jan B. Welch, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3412, 301–796–5776, FAX: 301–847–8136, *jan.welch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is correcting a final rule that appeared in the **Federal Register** on Friday, March 9, 1979 (44 FR 13239). The final rule established administrative detention procedures for devices intended for human use believed to be adulterated or misbranded. The document was published with a citation to section 201(y) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(y)) (the FD&C Act) in the first column on page 13240 (§ 800.55(g)(1) (21 CFR 800.55(g)(1)) that subsequently was changed to section 201(x) of the FD&C Act by section 3(b) of the Nutrition Labeling and Education Act Amendments of 1993 (Pub. L. 103–80). In addition, the document was published with one typographical error in the first column on page 13241 (§ 800.55(k)(1)) in which the word ''is'' should have been the word ''in''. This document updates the statutory reference in § 800.55(g)(1) and corrects the typographical error in § 800.55(k)(1).

Publication of this rule constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). This amendment to the regulations provides only a technical change and corrects a nonsubstantive error. FDA therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) that notice and public comment are unnecessary, and under 5 U.S.C. 553(d)(3) that the rule can become effective upon publication.

FDA has determined under 21 CFR 25.30(i) that this final rule is of a type that, as a class, does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 800.55 have been approved under OMB control number 0910–0114, which expires April 30, 2016.

List of Subjects in 21 CFR Part 800

Administrative practice and procedure; Medical devices; Ophthalmic goods and services; Packaging and containers; Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 800 is amended as follows:

PART 800—GENERAL

■ 1. The authority citation for 21 CFR Part 800 continues to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 360e, 360i, 360k, 361, 362, 371.

■ 2. In § 800.55, revise paragraph (g)(1) and the first sentence of paragraph (k) to read as follows:

§ 800.55 Administrative detention.

* * * * *

(g) *Appeal of a detention order.* (1) A person who would be entitled to claim