

II. Summary of the Major Provisions of the Regulatory Action in Question

To conform the regulations to current practice, the Department is issuing this final rule to describe how the TUR indicators are computed for purposes of determining whether a State meets the 110 percent look-back requirements. The final rule regulations at 20 CFR 615 implement the provisions of EUCA relating to the insured unemployment rate (IUR) indicators, including how they will be computed. The regulation, at 20 CFR 615.12, explains the IUR triggers and how the rates are computed. Until this final rule, the regulation did not address the TUR indicator although the Department issued UIPLs No. 45–92 and No. 16–11, respectively, addressing the TUR indicator and its computation.

Because of these differences in the calculation of the insured and total

unemployment rates, the appropriate methodology for computing the look-back percentage for the TUR indicator is to switch from truncation at the second decimal place, which is used for calculating the IUR indicator, to rounding to the second decimal place.

III. Costs and Benefits

This rule has not been designated an economically significant rule under section 3(f) of Executive Order 12866. However, the Department provides an analysis of the impact of the final rule, including a costs and benefits analysis under Executive Order 13563, in the Administrative Section of this final rule. This costs and benefits analysis was conducted for the proposed rule. Since the Department made no changes in the final rule, a new analysis was not conducted.

The Preamble to this final rule is organized as follows:

- I. Background—provides a brief description of the development of the final rule.
- II. Review of the Final Rule—analyzes comments and summarizes and discusses changes to the Federal-State Unemployment Compensation Program.
- III. Administrative Information—sets forth the applicable regulatory requirements.

I. Background

An understanding of the basic elements that comprise the mechanisms used to determine if EB is payable in a State is necessary to appreciate the dynamics of the EB program. EB programs can be triggered by two different measures for unemployment: The IUR and TUR. The table below compares the characteristics of each.

Characteristics	IUR	TUR
Type of Data	Administrative	Sample.
Definition	Continued Claims/Covered Employment	Unemployed/Employed+Unemployed.
Seasonally Adjusted	No	Yes.
Data Source	States	Bureau of Labor Statistics.
Collection Frequency	Weekly	Monthly.
Trigger Value Computation	13-Week Moving Average	3-Month Moving Average.

EB is payable in a State only during an EB period of unusually high unemployment in the State. Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), Public Law 91–373, provides methods for determining whether a State’s current unemployment situation qualifies as an EB period. EB periods are determined by “on” and “off” indicators (commonly referred to as triggers) in the State. Section 203(d), EUCA, provides for an “on” indicator based on the IUR. The IUR is computed weekly by the States using administrative data on State unemployment compensation claims filed and the total population of employed individuals covered by unemployment insurance. States trigger “on” EB if the IUR trigger value for the most recent 13-week period equals or exceeds 5 percent and equals or exceeds 120 percent of the average of such trigger values for the corresponding 13-week period ending in each of the preceding 2 calendar years. The calculation of the relationship between the current rate and prior 2 years’ rates is commonly referred to as the “look-back.”

The Unemployment Compensation Amendments of 1992, Public Law 102–318, added Section 203(f), EUCA, to provide for an optional alternative indicator that States may use to trigger

“on” EB based on the TUR. That indicator requires that, for the most recent 3 months for which data for all States is published, the average TUR in the State (seasonally adjusted) for the most recent 3-month period equals or exceeds 6.5 percent and the average TUR in the State (seasonally adjusted) equals or exceeds 110 percent of the average TUR for either or both of the corresponding 3-month periods in the 2 preceding calendar years (look-back). The 1992 amendments also provided for a calculation of a “high unemployment period” when the TUR in a State equals or exceeds 8 percent and meets the 110 percent look-back described above, permitting the payment of additional weeks of EB. Section 203(f)(3), EUCA, provides that “determinations of the rate of total unemployment in any State for any period . . . shall be made by the Secretary.” An EB period ends when the State no longer meets any of the “on” triggers provided for in State law.

Regulations at 20 CFR part 615 implement the provisions of EUCA relating to the IUR indicators, including how they will be computed. The regulation at 20 CFR 615.12 explains the IUR triggers and how the rates are computed. The regulation does not address the TUR indicator although the Department issued UIPLs No. 45–92 and No. 16–11, respectively, addressing the TUR indicator and its computation. To

conform the regulations to current practice, the Department is issuing this final rule to describe how the TUR indicators are computed for purposes of determining whether a State meets the 110 percent look-back requirements.

In the absence of explicit guidance and regulation, the Department previously adapted a portion of the existing guidance for the IUR look-back as a basis for calculating the TUR look-back. Specifically, in computing the look-back percentage for the TUR trigger the procedure for determining the number of significant digits from the resulting fraction followed 20 CFR 615.12(c)(3).

The TUR indicator uses total unemployment rates determined by the Bureau of Labor Statistics (BLS). These rates are measured using sampled data and therefore are imprecise due to sampling error. In order to ensure that the TUR indicator is measured with more consistency to similar measures, and to the extent possible, a more accurate measure, the Department has determined that an appropriate methodology for computing the look-back on the TUR indicator is to switch from truncation to rounding to the nearest hundredth, or second decimal place. Additionally, rounding, rather than truncating, is consistent with BLS practices in treating the TUR data. UIPL No. 16–11, dated May 20, 2011,

informed the State Workforce Agencies (SWAs) that the full effect of this new rounding procedure was implemented retroactive to April 16, 2011.

General

Section 3304(a)(11) of the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*) (FUTA) requires, as a condition of employers in States receiving credits against the Federal unemployment tax, that the States' unemployment compensation laws provide for the payment of extended unemployment compensation during periods of high unemployment to eligible individuals. EUCA established the EB Program by which, if certain conditions are met in a State under its law, extended unemployment compensation is provided to workers in the State who have exhausted their regular compensation during a period of high unemployment referred to as an EB period. EUCA provides methods for determining whether an EB period exists in the State. These methods are referred to as "on" or "off" indicators.

There were two "on" and "off" indicators in existence before the enactment of the UC Amendments. These indicators were based on the IUR. The IUR indicator's trigger value is, under section 203(e) of EUCA, the ratio of the average number of unemployment claims filed in a State during the most recent 13 weeks to the average monthly number of employed individuals covered by UC in that State during the first four of the last six completed calendar quarters. The first indicator has two conditions which must be met and is required to be in State law. Under section 203(d) of EUCA, the EB Program is activated if a State's IUR trigger value (first condition) is at least 5 percent (referred to as the regular IUR trigger threshold with "look-back"), and is at least 120 percent of the average of the trigger values in the prior 2 years for the corresponding 13-week calendar periods (second condition). The second condition—that the most recent 13-week period must be at least 120 percent of the average of the corresponding periods in the last 2 years—is commonly referred to as the "look-back" provision. (The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312, allowed States to temporarily modify provisions in their EB laws to use the prior 3 years in applying the look-back.) The look-back provision supports activation of a State's EB Program only when the current unemployment rate is both high and increasing, which indicates that the State's labor market is worsening and

additional compensation is warranted. Under the second indicator, which is an option for a State, section 203(d) of EUCA provides the EB Program may be triggered "on" with an IUR trigger value of at least 6 percent regardless of its relation to the IUR trigger values in the preceding 2 years. The 6 percent value is referred to as the regular IUR trigger threshold without look-back.

Alternative Indicator

Because the IUR indicator failed to trigger many States "on" to the EB Program during the recession of the early 1990s, the UC Amendments amended the EUCA to permit States to adopt an alternative, more labor market sensitive, indicator based on the TUR to trigger "on" and "off" the EB Program. Specifically, paragraph (f) of section 203 of EUCA provides for a TUR indicator comprised of a Trigger Value and look-back provision. The Trigger Value for this indicator is the 3-month average of seasonally adjusted TURs for the most recent 3 months for which data for all States is published. The regular TUR trigger threshold is 6.5 percent. The look-back provision requires that the Trigger Value equals or exceeds 110 percent of the TUR Trigger Values for either or both of the corresponding 3-month periods in the 2 preceding calendar years. The TUR Trigger Value is determined by the Department based on data from BLS.

As with the IUR indicator, the look-back provision ensures that the State's TUR Trigger Value is both high and increasing, indicating that the State's labor market is worsening and additional compensation is warranted. A State will trigger "off" its EB Program when either the TUR Trigger Value falls below 6.5 percent, or the requirements pertaining to the look-back provision are not satisfied.

Regardless of whether a State's EB Program is triggered "on" based on the IUR or TUR indicators, sections 203(d)(2) and 203(f)(1)(B) of EUCA provide that the EB period is triggered "off" when the conditions supporting the activation of the EB Program are no longer satisfied. Additionally, when the program triggers "on" or "off" EB payments, it must remain in the new status ("on" or "off" EB payments) for a minimum of 13 weeks regardless of changes in future trigger values.

The Department implemented EUCA's provisions on the IUR indicator at 20 CFR part 615, published in 53 FR 27928, Jul. 25, 1988. The Department implemented the alternative TUR indicator provided by the UC Amendments through guidance on August 31, 1993 (UIPL No. 45–92). The

Department now incorporates the TUR indicator into regulations.

Payments of Additional Weeks of Extended Benefits

The UC Amendments provided that States electing to use the new TUR indicator must also provide for the payment of additional weeks of EB during a "high unemployment period" that occurs during an EB period. These additional weeks of EB are available if State law provides for the use of the alternative TUR indicator.

Consistent with EUCA § 203(b)(1), no EB period or high unemployment period may begin in any State by reason of a State "on" indicator before the 13-week minimum status period expires after the ending of a prior EB period with respect to such State. Conversely, no EB period or high unemployment period may end in any State by reason of a State "off" indicator before the 13-week minimum status period expires after the beginning of an EB period with respect to such State.

EUCA originally provided for the establishment of an EB account, and the amount in the account is the least of one of three amounts which is payable for regular extended compensation. The UC amendments added a new paragraph to section 202(b) of EUCA that increases the amount in these accounts during a high unemployment period. The amount payable in a high unemployment period is equal to whichever of the following is the least and is referred to as "high unemployment extended compensation":

- 80 percent (as opposed to 50 percent in a "normal" EB period) of the total amount of regular UC (including dependent's allowances) payable to the individual during the benefit year;
- 20 (as opposed to 13) times the individual's weekly benefit amount; or
- 46 (as opposed to 39) times the individual's weekly benefit amount, reduced by the regular UC paid (or deemed paid) during the benefit year.

The term "high unemployment period" is defined in Section 202(b)(3)(B), EUCA, as any period during which an EB Program would be in effect if the TUR indicator equaled or exceeded 8 percent and the TUR indicator equals or exceeds 110 percent of the TUR indicators for either or both the corresponding 3-month periods in the 2 previous calendar years.

Whether a high unemployment period exists in a State for a particular week is determined in accordance with provisions of State law implementing sections 202(b)(3) and 203(f) of EUCA

and the seasonally adjusted TUR indicator determined by BLS. When this determination is made, the State follows the requirements of sections 203(a) and (b) of EUCA for determining the first and last week for which high unemployment EB is payable. Specifically, a high unemployment EB period begins on the first day of the third calendar week after the TUR indicator requirements are satisfied, and ends on the last day of the third week after the first week for which the TUR indicator requirements are not met. However, as stated above, no EB period or high unemployment period may begin in any State by reason of a State "on" indicator before the 13-week minimum status period expires after the ending of a prior EB period with respect to such State.

Alternative Indicator Rounding Methodology

Before April 16, 2011, in absence of explicit statutory guidance and regulation, the Department adapted a portion of the requirement (in 20 CFR 615.12) for calculating the look-back percentage for the IUR indicator as a basis for determining the significant number of digits from the look-back percentage for the TUR indicator. Specifically, the quotient is computed to two decimal places and multiplied by 100 with all numbers to the right of the decimal point being dropped (known as "truncation"). The result is expressed as a percentage.

The UC Amendments provide for a State to trigger "on" EB using the TURs determined by BLS. As discussed above, because the TUR indicator uses unemployment rates determined by BLS using sampled data, the rates are imprecise due to sampling error. In order to ensure that the TUR indicator is measured with more consistency to similar measures, and to the extent possible, a more accurate measure, the Department has determined that an appropriate methodology for computing the look-back on the TUR indicator is to switch from truncation to rounding to the nearest hundredth. In contrast, the IUR indicator values are computed from administrative data and thus represent the full universe. Because of these differences in the calculation of the insured and total unemployment rates, on May 20, 2011 the Department announced, in UIPL No. 16-11, that an appropriate methodology for computing the look-back percentage for the TUR indicator is to switch from truncation at the second decimal place to rounding to the second decimal place.

UIPL No. 16-11 informed States of the new rounding methodology the

Department now employs when computing the current trigger rate as a percent of the comparable trigger rates in prior years for the TUR indicator. Since TURs have been rounded, an expression of a ratio of two TURs must also be rounded.

On a monthly basis, the 3-month average of the seasonally adjusted TUR is divided by the same measure for the corresponding 3 months in each of the applicable 2 prior years. The resulting decimal fraction is then rounded to the hundredths place (the second digit to the right of the decimal place). The resulting number is multiplied by 100, reported as an integer, and compared to the statutory threshold to determine if the State triggers "on" EB. UIPL No. 16-11 informed the SWAs that the full effect of this new rounding procedure was implemented retroactive to April 16, 2011.

II. Review of the Final Rule

The Department published the Notice of Proposed Rulemaking (NPRM) on the subject of this final rule in the **Federal Register** on October 27, 2014 at 79 FR 63859. The NPRM had a 60-day public comment period and allowed for the submission of comments by hand delivery or U.S. Mail or by electronic submission at www.regulations.gov.

At the close of the 60-day public comment period at midnight on December 26, 2014, the Department had received one public comment. After a careful analysis of the comment, which was posted on www.regulations.gov, the Department determined that the comment did not raise any substantive issues that required a response in the final rule. In addition, the Department received no requests for extensions of the public comment period.

Therefore, because the Department did not receive any comments that required a response on the NPRM, this final rule adopts the regulation as proposed, with minor technical corrections explained below.

The final rule updates 20 CFR part 615 so that it includes the TUR indicator. In addition, the final rule updates Part 615 to incorporate the rounding method adopted for the look-back. Also, the final rule makes technical amendments to this part to update its provisions since the last regulatory revision and to correct minor errors in the text of the existing regulations.

However, since the NPRM publication, the Department discovered that minor technical corrections were needed. A non-substantive technical addition of a phrase was made in the definition of "Department" in § 615.2 to

acknowledge that a Secretary's Order delegating authority to ETA can be superseded. A non-substantive technical addition was made in the definition of "Extended compensation" in § 615.2 to clarify that "extended benefits" can be used interchangeably with "extended compensation." Non-substantive deletions were made, in the definition of "Extended unemployment compensation" in § 615.2, of paragraphs (3) and (4). Paragraph (3) of § 615.2 in the NPRM was deleted because it redundantly repeats the substance in paragraph (1) of that section. Paragraph (4) of § 615.2 was deleted because it was placed in this location of the NPRM erroneously, simply as a typographical error.

For ease of reading § 615.2, the definitions in this section have been printed in their entirety. The following definitions are unchanged with the exception of changing Act to EUCA where appropriate: Additional compensation; And; Applicable State; Applicable State law; Average weekly benefit amount; Base period; Benefit structure; Benefit year; Claim filed in any State under the interstate benefit payment plan; Compensation and unemployment compensation; Date; Employed; Gross average weekly remuneration; Hospitalized for treatment of an emergency or life-threatening condition; Individual's capabilities; Jury duty; Reasonably short period; Regular compensation; Secretary; State; State agency; State law; systematic and sustained effort; Tangible evidence; and Week of unemployment. Also, an "s" was removed from the word "mean" in the definition of "Employed," and since the paragraph designations were removed in order to reorder the definitions alphabetically, the phrase "(n)(2) of this section" was replaced with "(2) of this definition" in paragraph (1), and the phrase "(n)(1) of this section" was replaced with "(1) of this definition" in paragraph (2) in the definition of "Week of unemployment."

Paragraph (a) of § 615.7 in the NPRM was revised in the final rule to delete the following language—

Removing the term "Extended Benefits" wherever it appears and replacing it with the term "Extended compensation" throughout.

This is no longer necessary since a technical correction was made in the definition of "Extended compensation" in § 615.2 to clarify that "extended benefits" can be used interchangeably with "extended compensation."

Non-substantive deletions were made in paragraph (d) of § 615.11, which discusses the limitations in an extended

benefit period. The paragraph was revised to delete from the NPRM language which reads—

extended benefit period or high unemployment period may begin in any State by reason of a State “on” indicator before the 14th week after the ending of a prior extended benefit period or high unemployment period in such State. Conversely, no extended benefit period or high unemployment period may end in any State by reason of a State “off” indicator before the 14th week after the beginning of an extended benefit period or high unemployment period in such State. In addition, no . . .

since this criteria is covered in paragraph (c) of the same section.

Three technical corrections were made in § 615.12. First, “our concurrence” was replaced with “the concurrence of the Department” in paragraph (d)(1). Second, in paragraph (d)(2), “Bureau of Labor Statistics” was spelled out since it is the first use in the rule text, and the paragraph was slightly revised to clarify that unemployment data released by BLS for each month have an initial release and then regular revisions. Third, an identical sentence in paragraphs (e)(1)(ii) and (e)(2)(ii) referencing the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312, was deleted from both paragraphs because it describes a temporary provision of law that no longer applies. Several non-substantive additions and deletions were made in § 615.13. The first was to clarify that paragraphs (a) and (b) were revised by adding paragraphs (a)(1), (a)(2), (b)(1), (b)(2), and (b)(3). Second, the phrase “the Department determines” was added after the word “which” in paragraph (a)(1). Third, the phrase “or high unemployment period” was added in paragraphs (a)(1) and (a)(2). Fourth, “a result of our determination” was replaced with “determined by the Department to be” in paragraph (a)(1).

Finally, typographical errors were corrected in §§ 615.2, 615.12, 615.13, 615.14, and 615.15. In § 615.2, a comma was added after the word “published” in the definition of “High unemployment period,” and “is” was replaced with “as” before the word “described” in the definition of “Trigger Value.” In § 615.12, an “s” was added to the word “State” in paragraph (e)(2)(i), and “However” was deleted and the “t” in the word “the” was capitalized to begin the sentence in paragraph (f). In paragraph (a)(1) of § 615.13, “the” was replaced with “a” before the word “notice”; “to us” located after the word “acceptable” was deleted; “we” was replaced with “the

Department”; “will” was added before the phrase “publish in the **Federal Register**”; and the word “publish” was revised to read “publishes” before the phrase “that information”. In paragraph (a)(2) of § 615.13, “our” was replaced with “of the Department’s” before the word “determination”. In § 615.14, the citation to paragraph (a) was corrected to paragraph (c), and the citation to paragraph (a)(4) was corrected to paragraph (c)(4). In § 615.15, “we” was replaced with “the Department,” and “require” was revised to read “requires”.

The final rule, as explained also in the discussion of Paperwork Reduction Act requirements below, retains proposed revisions in the NPRM to regulatory requirements at § 615.15, pertaining to records and reports State agencies must submit. Paragraphs (a) and (b) are revised for clarity by deleting unnecessary language regarding the Secretary’s authority to request Extended Benefit Program reports and to appoint audit officials for those reports. Furthermore, the final rule deletes paragraphs (c) and (d). In reference to reporting guidelines discussed in the Paperwork Reduction Act, the ET Handbook is a more effective way to communicate reporting requirements, because codifying the reporting requirements in paragraphs (c) and (d) of § 615.15 prevents the Department from adapting reporting instructions to changing conditions or needs. The ET Handbook requires the weekly submission of Forms ETA–538 and ETA–539. These forms have been computerized and contain information on initial Unemployment Insurance claims and continued weeks claimed. These figures are important economic indicators. Form ETA–538 provides information allowing release of advance unemployment claims information to the public five days after the close of the reference period. Form ETA–539 contains more detailed weekly claims information and the State’s 13-week IUR that is used to determine eligibility for the Extended Benefits program. The reporting requirements in paragraphs (c) and (d) of the old regulation are included in the ET Handbook, and elimination of the requirements in regulation allow for ease in making future modifications by simply updating the ET Handbook.

Furthermore, paragraph (d) existed during the implementation phase of the IUR indicator and required States to submit the method used to identify and select the weeks used for EB trigger purposes to ensure that States were consistent and comparable in their methods. With 30 years of experience,

as well as numerous data validation and data quality programs in effect, the Department has determined it is unnecessary to compel State administrators to provide this information. Current reporting guidelines contained in the ET Handbook are clear enough that States continue to have clear standards about which claims are used for constructing totals used to compute trigger values, thus permitting the deletion of this paragraph. The NPRM did not change the existing reporting requirements for Forms ETA–538 or ETA–539, and the Department received no substantive comments on the NPRM during the public comment period.

III. Administrative Information

Executive Orders 12866 and 13563

Executive Orders (E.O.) 13563 and 12866 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as “economically significant”); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866. Regarding item (4), any novel legal or policy issues raised by this rule do not arise from legal mandates, Presidential priorities, or the principles set forth in E.O. 12866.

For a “significant regulatory action,” E.O. 12866 asks agencies to describe the need for the regulatory action and explain how the regulatory action will meet that need, as well as assess the

costs and benefits of the regulation.¹ In the Unemployment Compensation Amendments of 1992 (UC Amendments), Congress adopted an optional indicator for the existing EB Program that is based on both the level of the TUR Trigger Value and the percentage the Trigger Value is of Trigger Values in comparable periods in each of the prior years (referred to as the look-back).² Although the TUR indicator was implemented in the early 1990s, there was never any regulation put in place defining its computation and its application. The Department is establishing regulations for the TUR indicator which interpret the law related to the TUR indicator and clarify the computation of its look-back provision. As discussed in more detail in the Background section above, the Department uses rounding to calculate the TUR because it is consistent with the BLS's calculation of unemployment rates. Based on the economic impact analysis that follows, the Department believes this is not an economically significant regulatory action.

EUCA, as amended by the UC Amendments, requires two conditions be met for a TUR-based "on" indicator to occur in a State: (1) For the most recent 3 months for which data for all States is published, the 3-month average seasonally adjusted TUR in the State equals or exceeds 6.5 percent, and (2) that the Trigger Value equals or exceeds 110 percent of the Trigger Values for either or both of the corresponding 3-month periods in the 2 preceding calendar years (look-back). The UC

Amendments also provide for a "high unemployment period" when the TUR Trigger Value in a State equals or exceeds 8 percent and meets the 110 percent look-back described above, permitting the payment of additional weeks of compensation.³ States that want to use the optional TUR indicator must have authority under State law which may require States to enact legislation that implements the Federal requirements. An EB period ends when the State no longer meets any of the "on" requirements provided for in State law.

Under the original methodology by which the Department determined the look-back criterion for the optional TUR indicator, the indicator's Trigger Value was divided by the indicator's Trigger Value for the comparable period in the preceding year and 2nd preceding year. Digits beyond the hundredths place (the second digit to the right of the decimal place) in the resultant decimal fractions were truncated and the results multiplied by 100 to determine the percent the current indicator Trigger Value was of the indicator Trigger Value in the comparable periods in the prior years. If the result was greater than or equal to 110 for one of the fractions, the look-back criterion was met. This approach paralleled the method used for the IUR look-back computation established in regulations at 20 CFR 615.12(c)(3); however, neither the law nor regulations specify the method for computing the TUR indicator look-back.⁴

The Department is changing the method for computing the TUR look-back by rounding to the hundredths place, rather than truncating. The TUR indicator uses total unemployment rates determined by BLS. These rates are measured using sampled data and therefore are imprecise due to sampling error. In order to ensure that the TUR indicator is measured with more consistency to similar measures, and to the extent possible, a more accurate measure, the Department has determined that an appropriate methodology for computing the look-back on the TUR indicator is to switch from truncation to rounding to the nearest hundredth, or second decimal place. In contrast, IUR indicators are computed from administrative data and thus represent the full universe. Because of these differences in the computation of the insured and total unemployment rates, the Department has determined that an appropriate methodology for computing the look-back for the TUR indicator is to switch from truncation at the second decimal place, to rounding to the second decimal place. Rounding, rather than truncating, is consistent with BLS practices for TUR data. UIPL No. 16-11, dated May 20, 2011, informed the SWAs that the full effect of this new rounding procedure was implemented retroactive to April 16, 2011.

Rounding Change in the TUR Look-Back Computation

Original Method:

$$\frac{\text{Three Mo. SATUR}}{\text{Three Mo. SATUR (-1)}} = (\text{ratio truncated at second decimal place}) * 100$$

New Method:

$$\frac{\text{Three Mo. SATUR}}{\text{Three Mo. SATUR (-1)}} = (\text{ratio rounded at second decimal place}) * 100$$

¹ Executive Order No. 12866, § 6(a)(3)(B).

² Unemployment Compensation Amendments of 1992, Public Law 102-318 (1992). This law added Section 203(f) to EUCA to provide for an optional alternative indicator that States may use to trigger "on" or "off" EB based on the total unemployment rate. EUCA originally provided for an "on"

indicator based only on the IUR. EUCA, § 203(d)-(e).

³ EUCA, § 202(b)(3)(B). Meeting the 6.5 percent TUR indicator permits eligible claimants to receive up to an additional 50 percent of their regular entitlement during an EB period. Meeting the 8.0 percent indicator permits eligible claimant to

receive up to a total of 80 percent of their regular entitlement during a high EB period.

⁴ EUCA provides that "determinations of the rate of total unemployment in any State for any period . . . shall be made by the Secretary." EUCA, § 203(f)(3).

Where:

Three Mo. SATUR = 3-month average seasonally adjusted total unemployment rate.

Three Mo. SATUR (- 1) = 3-month average seasonally adjusted total unemployment rate for the corresponding period in the prior year period.

Potential Impacts

Changing the look-back computational method will have a marginal economic impact because of the new rounding method and no increased operational burden because it would result in no change in claimant behavior or in procedure from the existing process.⁵ The TUR indicator and new rounding method are currently implemented for the States to use; however, because the Department is implementing in regulations the TUR indicator as well as the new rounding method for the TUR look-back, the Department offers estimates of both impacts.

The UI program is a transfer payment program. For the purposes of a cost-benefit analysis under E.O.s 13563 and 12866, transfer payments are not considered a cost. Therefore, the analysis will be on the possible redistribution of wealth that may take place, as opposed to any impact on aggregate social welfare.⁶ In this case,

the redistribution is primarily one that takes place over time rather than between groups. More specifically, the UI program is structured to act as a counter-cyclical program in terms of its impact on the economy—during recessions increased benefit payments (much higher than taxes paid) provide temporary income support and greater economic stimulus which prevents greater economic distress, while during expansions the program acts through higher taxes to lower overall employment and demand levels. Because a State whose Trigger Value meets or exceeds the threshold and whose look-back falls short of meeting the requirement by 0.05 percentage point or less would trigger “on” under the rounding computation while under the truncation method would keep the State “off,” the change marginally increases extended compensation as the TUR Trigger Value increases in a recession. A change to increase the duration of benefits during recessions will ultimately increase the counter-cyclical nature of the program by increasing stimulus during recessions while slightly decreasing economic activity during expansions. Following is an impact analysis which estimates the change in the level and timing of the UI benefits paid and taxes collected as a

result of the change for the look-back provision of the TUR indicator.

The actual future impacts of changing the look-back calculation on the flow of UI benefits and taxes are dependent upon the unemployment rate in relation to the TUR trigger threshold and the number of States that have actually implemented the optional TUR indicator. Historically, the proportion of months that the EB Program has been in effect was extremely low, due primarily to a relatively high threshold in relation to the level of unemployment, unwillingness by States to adopt the optional indicators, and Federal emergency benefit programs that at times can and have supplanted the EB Program. For example, on average for the 1991 and 2001 high unemployment periods, State indicators were “on” in roughly 3 percent of the State trigger months.⁷ In contrast, this past recession’s high unemployment period (2007–2011) has been quite unique: In over 40 percent of the State trigger months, the EB Program has been “on,” due primarily to the large number of States adopting the optional TUR indicator once the Federal Government began paying 100 percent of the costs (see Table 1).

TABLE 1—HOW OFTEN THE EXTENDED BENEFIT PROGRAM IS “ON”

High unemployment periods	State trigger months	State trigger months EB was “on”	Percent of trigger months EB was “on”
1991–1994 ¹	2,226	111	5.0
2001–2004 ²	2,438	38	1.4
2007–2011 ³	2,392	1,055	44

¹ Period begins in July 1991 and goes to Dec. 1994 to include the post recessionary period of high unemployment.
² Period begins in Mar. 2001 and goes to Dec. 2004 to include the post recessionary period of high unemployment.
³ Period begins in Dec. 2007 and goes to Sept. 2011 to include the post recessionary period of high unemployment.

Only seven States adopted the optional TUR indicator upon its introduction in 1993. Then from 1994 through 2008, only four more States added the TUR indicator to their State law, bringing the number to 11 at the start of 2009 (see Table 2). The number of States implementing the optional TUR indicator and how often the EB Program is actually activated are critical

pieces of information for estimating the impacts of the look-back rounding methodology change. In 2009, as part of the American Recovery and Reinvestment Act (Recovery Act), the Federal government began paying 100 percent of extended compensation and high unemployment extended compensation, so the number of States that adopted the optional TUR indicator

went up to 38 in 2009, then 39 in 2011.⁸ All of the 28 States that adopted the TUR indicator post-Recovery Act instituted the TUR indicator on a temporary basis—for as long as the Federal government was paying 100 percent of the compensation for the EB Program.

⁵ The process of look-back calculation is done in the Division of Fiscal and Actuarial Services, Employment and Training Administration of the U.S. Department of Labor, using data from the Bureau of Labor Statistics which calculates the trigger values. The operational procedure will remain exactly the same as done previously by State and Federal staff.

⁶ See Office of Management and Budget, *Circular A-4: Regulatory Analysis*, p. 46 (Sept. 17, 2003), available at http://www.whitehouse.gov/omb/circulars_default.

⁷ State trigger months are the number of months during high unemployment periods (see notes to Table 1) multiplied by the number of States, *i.e.*, 53. During non-recessionary the percentage would be even less and close to zero. Extended Benefit Program data is found in the DOL ETA-394 annual report. <http://www.workforcesecurity.doleta.gov/unemploy/hb394.asp>.

⁸ An additional feature of the TUR trigger that should be noted is that for claims beginning after December, 2010, Congress added a 3rd year to the look-back calculation, so that if for the most recent

three-month period the TUR equals or exceeds 6.5 percent (or 8.0 percent) and the average TUR in the State equals or exceeds 110 percent of the average TUR for any or all three of the corresponding three-month periods in the 3 preceding calendar years, then EB will trigger “on.” Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111-312, § 502 (Dec. 17, 2010). This feature expired on January 1, 2012, and was not included in the impact analysis.

TABLE 2—STATES THAT HAVE ADOPTED THE OPTIONAL EB TUR INDICATOR

Years	1993–1998	1999–2001	2002	2003–2004	2005–2008	2009–2010	2011
Total TUR indicator states	7	8	9	10	11	38	39
States	Alaska Connecticut Kansas Oregon Rhode Island ... Vermont Washington	New Hampshire	North Carolina	New Mexico	New Jersey Arizona. California. Colorado. Delaware. District of Columbia. Florida. Georgia. Idaho. Illinois. Indiana. Kentucky. Maine. Massachusetts. Michigan. Minnesota. Missouri. Nevada. New York. Ohio. Pennsylvania. South Carolina. Tennessee. Texas. Virginia. West Virginia. Wisconsin.	Alabama	Maryland.

Impact Assessment Methodology

ETA used two distinct methodologies, a time-series simulation and a Monte Carlo-type simulation analysis (each explained more fully below), to provide quantitative impact estimates for the change in the level and timing of the UI benefits paid and taxes collected as a result of the change in formulation of the TUR indicator. The specific goal of these two analyses is to provide a quantitative measure for: (1) The increased probability of a State turning “on” the EB Program under the new rounding rules, and (2) the likely change in the aggregate level of UI benefits and taxes with each instance of additional EB benefits paid. The results of these measures will allow a determination of the economic impact of that occurrence of additional EB benefits paid on the overall economy and on any subgroups.

The time-series simulation estimates are developed using a historical simulation methodology: By first applying the existing TUR indicator computation, and then applying the new rounding rules to data from a specified period of time and measuring the difference in outcomes. To examine the impact on outcomes, the data used is from the introduction of the optional TUR indicator in 1993 through September 2011 when this analysis was completed. This period encompasses

two recessions of varying severity, two complete economic cycles, and a large number of States turning “on” the EB Program. This period also includes the temporary period of 100 percent Federal reimbursement of EB benefit payments when a majority of States, 39, adopted the TUR indicator.⁹

The baseline case is considered to be the simulated outcomes under the current TUR look-back computation for the States that had adopted the optional TUR indicator. For each month during this historical period (January 1993 through September 2011), the actual seasonally adjusted 3-month average TUR¹⁰ was used as well as the actual look-back percentages for each State that had adopted the TUR indicator. The number of months in EB periods was

⁹The analysis does not include the computation of the 3 year look-back or the periods under which any State may have triggered “on” the EB Program by using the 3 year look-back. State data on adoption of the TUR trigger can be found on the weekly trigger notice at http://www.workforcesecurity.doleta.gov/unemploy/claims_arch.asp.

¹⁰The data for monthly seasonally adjusted State total unemployment rates is from Bureau of Labor Statistics LASST01000006 (<http://data.bls.gov/timeseries/LASST01000006>). The total amount of monthly EB benefits paid is from the Division of Fiscal and Actuarial Services in the Employment and Training Administration of the Department of Labor report 394 can be found here: <http://www.workforcesecurity.doleta.gov/unemploy/hb394.asp>.

then estimated for each state.¹¹ The TUR look-back percentage was then computed using the new rounding methodology and the analysis rerun. These computations enabled measurement of the differences between the two types of trigger formulations in the number months when the EB Program is triggered “on,” and then the amount of extended benefits paid.¹²

Probability of Turning “On” EB.
Using just the States that had adopted the TUR indicator, there were 2,271 monthly observations in this simulation, of which there were 1,170 instances when a State triggered “on” the EB Program by using the TUR indicator under the current methodology. When the new rounding rules were applied there were 1,177 instances—only 7 additional instances when a State would have triggered “on” EB, an increase of 0.6 percent (see Table 3).

¹¹The “on” period was computed for each state rather than using the actual historical outcome.

¹²Under the new rounding of the look-back formulation there will only be cases when the look back percentage in either of the 2 years, will be higher than the original so the EB Program will turn “on” while the original method will have the EB Program as “off.”

TABLE 3—EXTENDED BENEFIT PERIODS UNDER THE OLD AND NEW TUR INDICATOR ¹
[1993–2011]

	Estimated # of instances of EB “on”	# of instances of EB w/TUR indicator ≥ 6.0%	# of instances of EB w/TUR indicator ≥ 8.0%
Old Method	1,170	362	808
New Method	1,177	365	812

Source: Periods of EB are estimated using federal law and data from the Bureau of Labor Statistics seasonally adjusted Total Unemployment Rate series by State LASST01000006.

¹Data consists of measuring only the periods when the EB Program triggered “on” based on the TUR indicator and included only the States that had adopted the optional TUR indicator. The number of instances refers to the number of State months.

The seven instances included six different States. In four of the instances, the State was triggering “on” because of the 8.0 percent high unemployment period. In none of the instances were there two consecutive months in which a State had a different EB triggering

outcome under the new rounding methodology compared to the truncation method. Two of the instances when States triggered “on” EB due to the rounding calculation occurred following the 1991 recession, one occurred following the 2001 recession,

and four occurred following the 2007 recession when 39 States had adopted the optional TUR indicator (see Table 4). In six of the seven occurrences, the difference in the look-back calculation occurred in the 2nd prior year look-back calculation.

TABLE 4—PERIODS WHEN EB WAS TRIGGERED “ON” UNDER THE NEW ROUNDING FORMULATION

State	EB Trigger date	Rounded 3-month SATUR	First year look-back truncated	Second year look-back truncated	First year look-back rounded	Second year look-back rounded
Alaska	2/28/1993	8.0	86.02	109.58	86	110
Connecticut	5/31/1993	6.8	91.89	109.67	92	110
Oregon	11/30/2003	8.0	106.66	109.58	107	110
Alaska	1/31/2009	6.8	109.67	109.67	110	110
Alabama	3/31/2011	9.2	90.19	109.52	90	110
Kansas	3/31/2011	6.8	94.44	109.67	94	110
Georgia	4/30/2011	10.0	98.03	109.89	98	110

The 0.6 percent increase in the EB Program’s being “on” in this simulation represents the percentage likelihood change in the number of times that the EB Program would trigger “on” due solely to the change in formulation of the look-back mechanism for, on average, 13 States having the TUR indicator in place. Therefore, the likelihood of a State turning “on” the EB Program with the new rounding formulation may be represented by .05 percent (.6/13).

The time series estimates used the actual State unemployment rates as they occurred from 1993 through September 2011 and include only the States which had adopted the optional TUR indicator.

To provide further support for the estimate of the difference in the number of times the EB Program may trigger “on” due to rounding in the look-back calculation during a recession, an additional analysis was employed based on a Monte Carlo-type methodology. The Monte-Carlo methodology allows the simulation of thousands of possible State TUR values rather than just the historical values used in the time series analysis. Thirteen States—the seven original States that adopted the optional TUR indicator and six additional randomly selected States—were chosen,¹³ and then, using the mean and standard deviation of their total unemployment rates during the past

four recessions,¹⁴ one thousand TUR periods were created for each State using a random number generator with a normal distribution. The number of periods when the EB Program would trigger “on” by rounding as opposed to truncating was computed. Of the 13,000 total State observation periods (each representing recessionary periods), the EB Program would have triggered “on” in 4,822 periods using the original method of truncation for the look-back computation, while the EB Program would have triggered “on” in 4,903 periods using the method of rounding, an increase of 81 additional periods (see Table 5).

TABLE 5—DIFFERENCE BETWEEN EB TRIGGER FORMULATIONS UNDER SIMULATED RECESSIONARY TURs
[For 1,000 simulations for each State]

State ¹	Mean TUR in recession periods (%) ²	Standard deviation of recession period ²	Instances when EB “on” w/truncating	Instances when EB “on” w/rounding	Difference	% increase due to rounding
Alaska	8.14	1.21	448	459	11	2.40

¹³Thirteen States were used as a number of States likely to maintain the TUR indicator in the future. The six States were randomly selected to insure a representative group from the remaining States. The

six States randomly chosen were: Colorado; Delaware; Illinois; Kentucky; Maine; and Maryland.

¹⁴The mean and standard deviation were taken from actual monthly observations over the recession

and post-recession periods of: 1980–1983; 1991–1993; 2001–2003; and 2008–2011.

TABLE 5—DIFFERENCE BETWEEN EB TRIGGER FORMULATIONS UNDER SIMULATED RECESSIONARY TURs—Continued
[For 1,000 simulations for each State]

State ¹	Mean TUR in recession periods (%) ²	Standard deviation of recession period ²	Instances when EB “on” w/truncating	Instances when EB “on” w/rounding	Difference	% increase due to rounding
Colorado	6.35	1.48	226	229	3	1.31
Connecticut	6.31	1.59	363	375	12	3.20
Delaware	6.23	1.80	367	371	4	1.62
Illinois	8.22	1.98	499	507	8	1.58
Kansas	5.32	1.08	119	120	1	0.83
Kentucky	8.04	2.07	510	517	7	1.35
Maine	6.70	1.48	418	425	7	1.65
Maryland	5.24	1.30	183	185	2	1.08
Oregon	8.53	2.03	512	521	9	1.73
Rhode Island	8.01	2.08	497	506	9	1.78
Vermont	5.66	1.21	221	223	2	0.90
Washington	8.06	1.95	459	465	6	1.29

¹ Original seven States to adopt the optional TUR indicator are in bold.

² The mean and standard deviation were taken from actual monthly TUR observations over the recession and post-recession periods of: 1980–1983; 1991–1993; 2001–2003; 2008–2011.

Across the States this represents, on average, a 1.7 percent (81/4822) increase in the likelihood of turning “on” the EB Program under the new rounding rules (see Table 6). This also represents the

cumulative difference of the 13 States, meaning that each State in this simulation could be considered to have added a 0.13 percent increase of an added instance of turning “on” the EB

Program (1.7/13). This value will be used as the per-State increase in the likelihood of turning “on” the EB Program under the new rounding rules in this simulation.

TABLE 6—MONTE CARLO-TYPE ANALYSIS OF DIFFERENCE IN EB TRIGGER FORMULATION
[For 1,000 simulated monthly trigger values per State]

State	# Instances EB “on” w/truncating	# Instances EB “On” w/rounding	Difference	% Difference
13 States	4,822	4,903	81	1.7
Per State Average	371	377	6	

Source: Computations made by U.S. DOL ETA/OUI/DFAS.

Transfer to EB Recipients: Temporary Income Support (During Recession)

The revision to the TUR indicator computation methodology will result in increased benefits payments during a recession, which provide temporary income support and greater economic stimulus than would otherwise exist during that economic time period. This increased economic stimulus will prevent greater economic distress during a recession. This impact is not a true benefit of the rule because, as explained above, the TUR indicator formulation would redistribute existing transfer payments only over time. That is, a change to increase extended benefits during recessions will ultimately increase the counter-cyclical nature of the program by increasing stimulus during recessions while doing the opposite during expansions.

Increased Compensation. A value for the amount of additional extended compensation and number of people who would receive the extended compensation under the rounding rules

was estimated using a time-series methodology. The estimated total level of extended compensation that would have been paid under the look-back computation was estimated using a weekly survival rate method. In this methodology, for each week that the EB Program is “on,” the number of State EB claimants is multiplied by the State average weekly benefit amount to get the weekly total benefit amount. To arrive at the weekly number of EB claimants, a weekly survival rate is applied for each week of EB to a beginning number of regular UI program exhaustees.¹⁵ This was done for each week of the EB period (either 13 or 20 weeks) and aggregated to get total EB payments for the applicable period, *i.e.*, the period during which each State was

¹⁵ Survival rate is the probability that a claimant will collect Unemployment Compensation from one week to the next. An exhaustee is a person collecting Unemployment Compensation who would be in their last week of compensation but for the EB Program.

“on” EB. This computation is represented in the formula below.

Computation of Total Extended Compensation Paid

Total Wkly Extended Compensation EB Benefits = Σ (Reg. Program Wkly Exhaustions¹⁶ * Wkly Survival Rate¹⁷) * Avg. Wkly Benefit¹⁸ (Summed over each week of the EB period.)

Applying this computation to the seven State periods that turned “on” the EB Program under the rounding formulation in the time series simulation, it was estimated that in total

¹⁶ ETA–5159 report includes monthly regular program exhaustees which were divided by the number of weeks in a month to get weekly data.

¹⁷ The weekly survival rate is the proportion of individuals claiming unemployment compensation in week n that will also claim unemployment compensation in week n+1. A weekly survival rate of 0.97 was used as a constant for each week of extended benefits. This level is derived from the Division of Fiscal and Actuarial Services State Benefit Forecasting Model.

¹⁸ State average weekly benefit is derived from the ETA–5159 monthly claims report: <http://www.workforsecurity.doleta.gov/unemploy/finance.asp>.

\$294 million¹⁹ more would have been paid out in extended compensation, and there would be an increase of 148,000²⁰ new first payments in the EB Program. This translates into an estimated 1.2 percent increase (\$294 million/\$24,897 million—total extended compensation in the simulation) in extended compensation and a 1.5 percent increase (\$148,000/\$9.6 million—total EB first pays in the simulation) of EB first payments under the rounding rules compared to the current methodology (*i.e.*, truncating the look-back computation after two decimal places).

Again, dividing these results into the per State added percentage point increase for each instance of triggering “on” the EB Program means there would be a 0.17 percent increase in extended compensation paid²¹ and a 0.22 percent increase²² in first payments.

In terms of how the increased extended compensation paid would be distributed among subgroups of EB recipients, attempting to disaggregate this level of benefits into numerically small select subgroups of claimants such as low-wage workers, or minority claimants, would mean working with monetary flows of very little statistical consequence. Therefore, the Department has determined that no distributional analysis is necessary.

Transfer From State Unemployment Insurance Accounts: Increased Employer Taxes (During Expansions)

The revision to the TUR indicator computation methodology will result in

¹⁹ This amount is, of course, dependent on the size of the States, but it does represent a reasonable estimate since these are the States most likely to have the TUR indicator in the future. Also, this amount is considered a high estimate, since 4 of the States triggered on to 20 weeks of benefits, and the average is a reasonable expected value for the level of per State extended benefits. For all of the periods except one (Alaska, 1/2009) during the State EB period triggered on by the rounding calculation, there was no “on” period for the truncation calculation. The Alaska data was adjusted for the truncation period.

²⁰ Estimated increase in the number of first payments in the seven state periods of triggering on EB found in the Time-series analysis.

²¹ Total additional extended compensation from rounding, \$294 million divided by the number of State periods, 7, and then divided by the total extended compensation for the entire period, \$24,897 million.

²² The increase in first pays due to rounding, 148,000, divided by the number of State periods, 7, and then dividing by the total number of EB first pays during the period of 9.6 million.

increased economic stimulus during recessions. However, a significant increase in extended compensation may result in a State UI tax increase on employers. An increased UI tax on employers might result in dampened overall economic activity as employers postpone equipment purchases or hiring. This impact does not represent a true cost of the changes made in this rule because it is associated with a corresponding transfer of payments to EB recipients during recessions. That is, the regulation would result in redistribution of wealth over time (based on the counter-cyclical nature of the EB Program), rather than have a net social welfare impact.

UI Taxes. Except for the temporary provisions that are no longer in effect, Federal statutes specify that 50 percent of extended compensation is paid from the Extended Unemployment Compensation Account (EUCA) in the Unemployment Trust Fund (UTF), which is funded through the Federal Unemployment Tax Act (FUTA), and 50 percent is paid by the liable State from its account in the UTF.

The Federal monies for extended compensation flow from EUCA, which is also used to fund additional Federal emergency benefit programs. Historically, the balance of this account has been sufficient to pay the level of extended compensation during a recession and would therefore be much greater than the estimated amounts that may result from the change in the look-back mechanism.²³ Nevertheless, even if EUCA, together with the other Federal accounts in the UTF is depleted, the account can obtain advances from the General Fund with no impact on the FUTA tax, which means there would be no expected increase in Federal taxes from the change in formulation of the TUR indicator.

On the State side, every State has a tax structure that responds with higher taxes when the amount of reserves in its UTF account declines.²⁴ Thus, a significant increase in paid extended compensation may result in a State UI tax increase on employers. However, the

tax response takes place only with relatively large changes in the State trust fund account balance, and differs by State depending on the size of the account balance; small changes in a State trust fund account balance may actually have no impact in a State’s UI taxes. To gauge the magnitude of the tax impact from an increase in extended compensation paid, a generalized rule of State UI tax collections can be applied: For any specified increase in unemployment compensation, 100 percent of the increase will be collected in UI taxes over a 10-year period.²⁵

Using the estimated increase of extended compensation paid (due to the TUR indicator rounding computation) from the time-series simulation, \$294 million, an estimate was derived for the amount of potential State tax increases by assuming the increase in extended compensation was divided among the average number of States that experienced an increase in extended EB compensation paid over a 10-year period. To arrive at an estimate for the expected increase in State unemployment compensation taxes due to a change in the rounding rule for the look-back feature of the TUR indicator, 50 percent of the total extended compensation, \$147 million, is assumed to be financed by seven States for an average of \$21 million per State. The amount is assumed to be financed by increased State taxes over a 10-year period for an average of \$2.1 million per year. This amount represents an estimated increase of 0.14 percent²⁶ in State unemployment compensation taxes for each State that turns “on” the EB Program under the new rounding rules.

²⁵ Recoupment rule of UI taxes in response to a compensation increase is from an Office of Unemployment Insurance, Division of Fiscal and Actuarial Services State Revenue model run over a range of scenarios, 12/2011.

²⁶ Derived by taking the average estimated yearly tax increase per State, \$2.1 million, divided by the estimated amount of contributions per State per year, \$1.4 billion. This is certainly a very rough estimate that depends on the size of the States having the optional TUR indicator in the simulation. However, because those States would be expected to continue having the indicator, it is considered a reasonable level.

²³ Historical balances of the EUCA fund can be found here: http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_utf.htm.

²⁴ For applicable State triggering laws see Comparison of State UI Laws: <http://www.workforsecurity.doleta.gov/unemploy/comparison2011.asp>.

TABLE 7—ESTIMATED INCREASE IN STATE TAXES COLLECTED UNDER NEW ROUNDING FORMULATION

[Based on the estimated extended compensation from the Time-Series data, 1993–2011]

Period	Est. amt. of added extended compensation to finance ¹ (mil.)	Amt. financed per state ² (mil.)	Avg. amt. financed per year (mil.)	% Increase in taxes per state ³
1993–2011 data period	\$147	\$21	\$2.1	0.14

¹ Fifty percent of total estimated amount of increased extended compensation paid due to rounding from the Time-Series Data.² Derived from 50 percent of the estimated increase in extended compensation payments under the Time Series data divided by the number of States that experienced an increase.³ Total extended compensation to be financed divided by the total unemployment compensation contributions over the period: <http://www.workforcesecurity.doleta.gov/unemploy/hb394.asp>.

In terms of specific distribution of these impacts, disaggregating the tax increases into subgroups of employers such as small businesses would mean working with monetary flows of very little consequence. Therefore, the Department has determined that no distributional analysis is necessary.

Non-Quantified Impacts

OMB Circular No. A–4 requires the identification of any non-quantifiable benefits and costs that cannot be reasonably measured.²⁷ One primary non-quantifiable benefit of implementing regulations for the TUR indicator and the associated rounding rule, and which is a driving factor for its adoption, is that by codifying the TUR indicator the Department will explicitly clarify a methodology for computing the TUR look-back that regulations previously left unspecified. This final rule will remove the potential for future misunderstanding in the computation of the optional TUR indicator, as compared to the current status quo where the TUR look-back computation method is not specified in Department regulations.

Regarding the secondary impacts from increased temporary income during recessions and increased employer taxes during expansions, the Department has determined that the estimates of extended compensation and UI tax increases are too small to meaningfully model their impact on the macro economy. With a likely impact of increasing the number of instances the EB Program triggers “on” by two during an average recession and nine instances during a severe recession (as computed in detail in the scenarios below), these impact numbers are too small to model any stimulus impact during a recession or a dampening effect of the tax increases during expansions. Not only are the impacts on extended

compensation and taxes small compared to the U.S. economy (e.g., far below the \$1 billion limit for use of an economic multiplier effect on the level of employment or economic activity²⁸), but even compared to aggregate unemployment compensation payments and taxes the numbers are rather insignificant.

Potential Future Stimulative and Distributional Impacts Scenarios

By increasing the overall level of benefits paid by States during recessionary periods, the change in TUR indicator computation methodology would aid in the counter-cyclical nature of the Unemployment Compensation program by increasing the economic stimulus during recessions and possibly dampening overall activity with possible higher taxes. The estimates for the increased probability of States triggering “on” the EB Program, increased benefits, higher first payments, and potential changes to UI taxes, can provide estimates for the change in flows of the Unemployment Compensation program that this proposal may cause under various future recessionary scenarios.

*Scenario 1 (11 States with the optional TUR indicator; typical severity 3-year recession and post-recession period).*²⁹ In a likely scenario, assuming a recession and post-recession high unemployment period lasting 3 years, with 11 States having the optional TUR indicator in place, it would mean 396 possible State months (11 States * 36 months) of high enough unemployment for the EB Program to trigger “on.” Using the results from the high unemployment periods in the Monte Carlo-type analysis, the Department could expect approximately 147 periods of the EB Program to be triggered “on” in States with the optional TUR

indicator (37 percent³⁰ * 396 State months) using the original truncation methodology. With 11 States having the optional TUR indicator, the likelihood of turning “on” the EB Program under the rounding methodology would be 1.4 percent (11 States * 0.13 percent per State likelihood), this would increase the number of EB Program periods by two instances (1.4 percent * 147 periods). Assuming a recession with \$2 billion in total extended compensation paid and 1.5 million first payments in the EB Program, then with two more instance of the EB Program triggering “on” the Department would expect an increase in extended compensation paid of \$7 million (0.34 percent * \$2 billion) and an increase of 7,000 in the number of first payments (1.5 million * 0.44 percent). The resulting tax increases spread over a 10-year period in one State would then be expected to be approximately \$350,000 per year ((\$7 million * 0.5 State cost)/10 years).

*Scenario 2 (20 States with optional TUR indicator; more severe 3-year recession and post-recession period).*³¹ In a less likely scenario, but one with possibly the highest expected impact, assuming a recession and post-recession period lasting 3 years, with 20 States having the optional TUR indicator in place—720 State months (20 States * 36 months). In a more severe recession the Department could expect 360 periods of the EB Program to be triggered “on” with the optional TUR indicator (720 * 50 percent³²). With 20 States having the optional TUR indicator the likelihood of triggering “on” the EB Program under the new rounding rules would be 2.6 percent (20 States * 0.13 percent³³) this would increase the number of periods

³⁰ A value similar to the percentage of State months that triggered on to EB in the 1991 and 2001 recessions.

³¹ Similar in severity to the 2007 recession.
³² Assumed likelihood of triggering on EB in a severe recession.

³³ Calculated likelihood of triggering on EB in the severe recession for States with optional TUR trigger under the new rounding rules.

²⁷ See Office of Management and Budget, *Circular A–4: Regulatory Analysis*, pp. 2–3, 10, 26–27 (Sept. 17, 2003), available at http://www.whitehouse.gov/omb/circulars_default.

²⁸ In OMB Circular A–4 in reference to the size of stimulative impacts: “. . . that rules with annual costs that are less than one billion dollars are likely to have a minimal effect on economic growth.”

²⁹ Similar in severity to the 1991 recession.

the EB Program would be triggered “on” by nine instances (2.6 percent * 360 periods). Assuming a recession with \$5 billion in total extended compensation paid and 3.0 million first payments for the program,³⁴ with nine more instances of the EB Program triggering “on,” the Department would expect an increase in extended compensation of \$77 million (0.17 percent³⁵ * 9 periods * \$5 billion) and an increase of 59,000 in the number of first payments for the program (3 million * 9 periods * 0.22 percent). The resulting tax increases spread over a 10-year period in one State would then be expected to be approximately \$190,000

per year (\$77 million * 0.5 State cost)/20 States)/10 years).

Impact of the TUR Option

The preceding impact analysis focused on changing the computational methodology of the TUR look-back provision. Since the Department is not considering the removal of the optional TUR indicator, the analysis does not measure the impact of the original adoption of the TUR indicator in 1992. However, it should be noted that a review of the most evident differences caused by the implementation of this option shows a rather small impact.

From 1993 to 2006, for the 11 States that adopted the TUR indicator by 2006 (Table 2), EB costs are totaled for each period when one of these States triggered on to the EB Program with the TUR option but would not have turned on extended compensation under the IUR option.³⁶ During this 14-year period, there were 28 instances when a State triggered on to the EB Program using the TUR option and would not have triggered on using the IUR trigger. The total extended compensation costs of these instances were approximately \$310 million and the number of First Payments was 330,000.

TABLE 8—STATES TRIGGERING ON TO THE EB PROGRAM USING THE TUR OPTION
[Without qualifying with the IUR Option]

1993	1994	1995	1996	1997	1998	1999
Alaska Oregon Rhode Is Washington.	Alaska Oregon Rhode Is,	Alaska Rhode Is.	Alaska	Alaska	Alaska	Alaska,
2000	2001	2002	2003	2004	2005	2006
Alaska	Alaska	Alaska	Alaska N. Carolina Oregon	Alaska Michigan N. Carolina Oregon Washington.	Alaska. Michigan. Oregon. Washington.	

This is a relatively small number of States and amount spent, on average approximately \$22 million per year, and in no year did the amount spent on extended compensation from States that triggered on using the TUR option ever exceed \$100 million. Indeed, measuring the change in cyclical financial flows of the UI program does not seem necessary under these aggregates.

Conclusion

Placing the optional TUR indicator in regulations does not impose any additional change in burden, since no change in the operational procedure will occur. In addition, it incorporates in regulations the computational methodology previously communicated in UIPL No. 16–11 for the TUR’s look-back.

Changing the look-back computation does have an impact, although it is estimated to be small. For each State that adopted the optional TUR indicator, it was found that the new rounding rule would likely add a 0.13 percentage point increase in the

likelihood of a single State triggering “on” the EB Program during a recession. For each State that triggered “on” the EB Program, it would likely add a 0.17 percent increase in the level of extended compensation paid, a 0.22 percent increase in people receiving extended compensation, and a per State increase in unemployment compensation taxes of 0.14 percent per year. These numbers indicate a negligible impact on the redistribution of the flows (unemployment compensation and taxes) in the Unemployment Compensation program. These impacts are so small that any stimulative or distributional effects would be considered of little consequence. Indeed, the probable economic impact encompasses the likely possibility (depending on the future level of the TUR) that there would be no measurable impact from a change in the derivation of the TUR indicator due to rounding the look-back proportion as opposed to truncating that value.

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).

³⁴ Calculated from average costs and payments made during recessions 1980–2001.

³⁵ Assumed likelihood of triggering on EB in this type of recession.

³⁶ For a state to trigger on extended compensation using the IUR, its insured unemployment rate (IUR) for the previous 13 weeks is at least 5 percent and is 120 percent of the average of the rates for the

corresponding 13-week period in each of the 2 previous years.

The Department published an NPRM on October 27, 2014, in the **Federal Register** (79 FR 63859). The NPRM proposed to amend 20 CFR 615, Extended Benefits, by implementing the TUR indicator, an optional calculation methodology for triggering on Extended Benefits, in regulations. The NPRM also proposed to revise the regulatory requirements at § 615.15, pertaining to records and reports State agencies must submit. More specifically, paragraphs (a) and (b) were proposed to be revised for clarity by deleting unnecessary language regarding the Secretary's authority to request Extended Benefit Program reports and to appoint audit officials for those reports. Furthermore, for reasons discussed in the Review of the Final Rule, the Department proposed to delete paragraphs (c) and (d). The reporting instructions for the proper and timely submission of data are provided in ET Handbook No. 401, which governs Unemployment Compensation required reporting.

The preamble to the NPRM stated that the Department had determined the proposed rule did not contain new information collections. However, to ensure transparency and full opportunities for public participation under all appropriate authorities, the Department is submitting an Information Collection Request (ICR) to the Office of Management and Budget (OMB) to revise the PRA approval for the information collections to reflect this rulemaking. See 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.11. As part of that process, the Department sought public comments on the removal of specific information collection requirements in the NPRM and on the general Extended Benefit reporting requirements in Handbook 401 and Forms ETA 538 and 539 in light of specific areas of interest to minimize so-called "paperwork" burdens on the public. The Department published a notice in the **Federal Register** on July 7, 2015 (80 FR 38747) to provide the public a 60-day opportunity to comment on the information collections as described in the rule. No comments on the ICR were received during the public comment period.

Concurrent with the publication of this final rule, the Department is submitting an ICR to OMB for approval. The Department will publish a **Federal Register** notice upon receipt of OMB's notice of approval.

Overview of the Information Collection

Agency: DOL-ETA.

Action: ICR Revision.

Title of Collection: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed.

OMB Control Number: 1205-0028.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 5,512.

Total Estimated Annual Time Burden: 3,675 hours.

Total Estimated Annual Other Costs Burden: \$0.

Executive Order 13132

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 does not 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 13132. Any action taken by a State as a result of the final rule would be at its own discretion as the rule imposes no requirements.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (Reform Act). Under the Reform 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 final 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.

Accordingly, it is unnecessary for the Department to prepare a budgetary impact statement. Further, as noted above in the conclusion of the economic

impact analysis, the impact is positive for State UTF accounts.

Effect on Family Life

The Department certifies that this final rule has been assessed according to 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, 112 Stat. 2681), for its effect on family well-being. It will not adversely affect the well-being of the nation's families. Therefore, the Department certifies that this final rule does not adversely impact family well-being.

Regulatory Flexibility Act/SBREFA

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis which will describe the impact of the final rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the final rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Furthermore, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact on a substantial number of small entities.

The RFA defines small entities as small business concerns, small not-for-profit enterprises, or small governmental jurisdictions. The final rule does not regulate small entities. As a result, any indirect impact on small entities would be from a tax increase resulting from a State triggering "on" because of the new computation method for the look-back. Therefore, the Department certifies that the final rule will not have a significant economic impact on a substantial number of these small entities.

Plain Language

The Department drafted this final rule in plain language.

List of Subjects in 20 CFR Part 615

Grant programs-labor; Reporting and recordkeeping requirements; Unemployment compensation.

For the reasons discussed in the preamble, ETA amends 20 CFR part 615 as follows:

PART 615—EXTENDED BENEFITS IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

■ 1. The authority citation for part 615 is revised to read as follows:

Authority: 26 U.S.C. 7805; 26 U.S.C. 1102; Secretary's Order No. 6–10.

■ 2. Revise § 615.1 to read as follows:

§ 615.1 Purpose.

This part implements the “Federal-State Extended Unemployment Compensation Act of 1970” (EUCA). Under the Federal Unemployment Tax Act, 26 U.S.C. 3304(a)(11), an approved State law must provide for the payment of extended compensation to eligible individuals who have exhausted all rights to regular compensation during specified periods of unemployment, as prescribed in EUCA and this part.

§§ 615.3, 615.4, 615.7, 616.8, 615.9, 615.12, and 615.14 [Amended]

■ 3. In part 615 remove the words “the Act” and add in their place the acronym “EUCA” in the following places:

- a. Section 615.3 (four places);
 - b. Section 615.4(a) and (b) introductory text;
 - c. Section 615.8(a) introductory text;
 - d. Section 615.8(c) introductory text;
 - e. Section 615.8(c)(2);
 - f. Section 615.8(d) introductory text;
 - g. Section 615.8(d)(3) (two places);
 - h. Section 615.8(d)(4);
 - i. Section 615.8(e) introductory text;
 - j. Section 615.8(e)(8);
 - k. Section 615.8(f)(1) introductory text;
 - l. Section 615.8(f)(1)(ii);
 - m. Section 615.8(f)(4);
 - n. Section 615.8(g)(1) and (5);
 - o. Section 615.9(d);
 - p. Section 615.14(a)(1) through (4);
 - q. Section 615.14(b) introductory text;
 - r. Section 615.14(c)(1);
 - s. Section 615.14(c)(2) (two places);
 - t. Section 615.14(c)(3) introductory text;
 - u. Section 615.14(c)(5) and (6);
 - v. Section 615.14(c)(7)(i) through (iii);
 - w. Section 615.14(d)(1);
 - x. Section 615.14(d)(2) (two places);
 - y. Section 615.14(d)(3) (four places);
 - z. Section 615.14(d)(6); and
- 4. Revise § 615.2 to read as follows:

§ 615.2 Definitions.

For the purposes of the EUCA and this part—

Additional compensation means compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors and,

when so payable, includes compensation payable pursuant to 5 U.S.C. chapter 85.

And, as used in section 202(a)(3)(D)(ii), shall be interpreted to mean “or”.

Applicable benefit year means, with respect to an individual, the current benefit year if, at the time an initial claim for extended compensation is filed, the individual has an unexpired benefit year only in the State in which such claim is filed, or, in any other case, the individual's most recent benefit year. For this purpose, the most recent benefit year for an individual who has unexpired benefit years in more than one State when an initial claim for extended compensation is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed. The individual's most recent benefit year which expires in an extended benefit period, when either extended compensation or high unemployment extended compensation is payable, is the applicable benefit year if the individual cannot establish a second benefit year or is precluded from receiving regular compensation in a second benefit year solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)).

Applicable State means, with respect to an individual, the State with respect to which the individual is an “exhaustee” as defined in § 615.5, and in the case of a combined wage claim for regular compensation, the term means the “paying State” as defined in § 616.6(e) of this chapter.

Applicable State law means the law of the State which is the applicable State for an individual.

Average weekly benefit amount, for the purposes of section 202(a)(3)(D)(i), means the weekly benefit amount (including dependents' allowances payable for a week of total unemployment and before any reduction because of earnings, pensions or other requirements) applicable to the week in which the individual failed to take an action which results in a disqualification as required by section 202(a)(3)(B) of the EUCA.

Base period means, with respect to an individual, the base period as determined under the applicable State law for the individual's applicable benefit year.

Benefit structure as used in section 204(a)(2)(D), for the requirement to round down to the “nearest lower full

dollar amount” for Federal reimbursement of sharable regular and sharable extended compensation means all of the following:

(1) Amounts of regular weekly benefit payments,

(2) Amounts of additional and extended weekly benefit payments,

(3) The State maximum or minimum weekly benefit,

(4) Partial and part-total benefit payments,

(5) Amounts payable after deduction for pensions, and

(6) Amounts payable after any other deduction required by State law.

Benefit year means, with respect to an individual, the benefit year as defined in the applicable State law.

Claim filed in any State under the interstate benefit payment plan, as used in section 202(c), means:

(1) Any interstate claim for a week of unemployment filed pursuant to the Interstate Benefit Payment Plan, but does not include—

- (i) A claim filed in Canada,
- (ii) A visiting claim filed by an individual who has received permission from his/her regular reporting office to report temporarily to a local office in another State and who has been furnished intrastate claim forms on which to file claims, or

(iii) A transient claim filed by an individual who is moving from place to place searching for work, or an intrastate claim for Extended Benefits filed by an individual who does not reside in a State that is in an Extended Benefit Period,

(2) *The first 2 weeks*, as used in section 202(c), means the first 2 weeks for which the individual files compensable claims for Extended Benefits under the Interstate Benefit Payment Plan in an agent State in which an Extended Benefit Period is not in effect during such weeks.

Compensation and unemployment compensation means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation and extended compensation as defined in this section.

Date of a disqualification, as used in section 202(a)(4), means the date the disqualification begins, as determined under the applicable State law.

Department means the United States Department of Labor, and shall include the Employment and Training Administration, the agency of the United States Department of Labor headed by the Assistant Secretary of Labor for Employment and Training to whom has been delegated the

Secretary's authority under the EUCA in Secretary's Order No. 6–2010 (75 FR 66268) or any subsequent order.

Eligibility period means, for an individual, the period consisting of—

(1) The weeks in the individual's applicable benefit year which begin in an extended benefit period or high unemployment period, or for a single benefit year, the weeks in the benefit year which begin in more than one extended benefit period or high unemployment period, and

(2) If the applicable benefit year ends within an extended benefit period or high unemployment period, any weeks thereafter which begin in such extended benefit period or high unemployment period,

(3) An individual may not have more than one eligibility period for any one exhaustion of regular benefits, or carry over from one eligibility period to another any entitlement to extended compensation.

Employed, for the purposes of section 202(a)(3)(B)(ii) of the EUCA, and *employment*, for the purposes of section 202(a)(4) of the EUCA, mean service performed in an employer-employee relationship as defined in the State law; and that law also shall govern whether that service must be covered by it, must consist of consecutive weeks, and must consist of more weeks of work than are required under section 202(a)(3)(B) of the EUCA.

EUCA means the Federal-State Extended Unemployment Compensation Act of 1970, title II of Public Law 91–373, 84 Stat. 695, 708 (codified in note to 26 U.S.C. 3304), as amended.

Extended benefit period means the weeks during which extended compensation is payable in a State in accordance with § 615.11.

Extended Benefits Program or *EB Program* means the entire program under which monetary payments are made to workers who have exhausted their regular compensation during periods of high unemployment.

Extended compensation or *extended benefits* means the funds payable to an individual for weeks of unemployment which begin in a regular EB period or high unemployment period (HUP), under those provisions of a State law which satisfy the requirements of EUCA and this part with respect to the payment of extended unemployment compensation, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation.

Extended compensation account is the account established for each individual claimant for the payment of

regular extended compensation or high unemployment extended compensation.

Extended unemployment compensation means:

(1) Regular extended compensation paid to an eligible individual under those provisions of a State law which are consistent with EUCA and this part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year; or

(2) High unemployment extended compensation paid to an eligible individual under an optional TUR indicator enacted under State law when the State is in a high unemployment period, in accordance with § 615.11(e) of this part, and that does not exceed the smallest of the following:

(i) 80 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 20 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or

(iii) 46 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

Gross average weekly remuneration, for the purposes of section 202(a)(3)(D)(i), means the remuneration offered for a week of work before any deductions for taxes or other purposes and, in case the offered pay may vary from week to week, it shall be determined on the basis of recent experience of workers performing work similar to the offered work for the employer who offered the work.

High unemployment extended compensation means the benefits payable to an individual for weeks of unemployment which begin in a high unemployment period, under those provisions of a State law which satisfy the requirements of EUCA and this part for the payment of high unemployment extended compensation. When so payable, high unemployment extended

compensation includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation. Regular extended unemployment compensation, along with high unemployment extended compensation, are part of the program referred to in this part as Extended Benefits.

High unemployment period (or HUP) means a period where the Department determines that the Trigger Value in a State, which has enacted the alternative Total Unemployment Rate indicator in law, for the most recent 3 months for which data for all States is published, equals or exceeds 8 percent and such Trigger Value equals or exceeds 110 percent of such Trigger Value for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.

Hospitalized for treatment of an emergency or life-threatening condition, as used in section 202(a)(3)(A)(ii), has the following meaning: "Hospitalized for treatment" means an individual was admitted to a hospital as an inpatient for medical treatment. Treatment is for an "emergency or life threatening condition" if determined to be such by the hospital officials or attending physician that provide the treatment for a medical condition existing upon or arising after hospitalization. For purposes of this definition, the term "medical treatment" refers to the application of any remedies which have the objective of effecting a cure of the emergency or life-threatening condition. Once an "emergency condition" or a "life-threatening condition" has been determined to exist by the hospital officials or attending physician, the status of the individual as so determined shall remain unchanged until release from the hospital.

Individual's capabilities, for the purposes of section 202(a)(3)(C), means work which the individual has the physical and mental capacity to perform and which meets the minimum requirements of section 202(a)(3)(D).

Insured Unemployment Rate means the percentage derived by dividing the average weekly number of individuals filing claims for regular compensation in a State for weeks of unemployment in the most recent 13-consecutive-week period as determined by the State on the basis of State reports to the United States Secretary of Labor by the average monthly employment covered under State law for the first 4 of the most recent 6 completed calendar quarters before the end of such 13-week period.

Jury duty, for purposes of section 202(a)(3)(A)(ii), means the performance of service as a juror, during all periods

of time an individual is engaged in such service, in any court of a State or the United States pursuant to the law of the State or the United States and the rules of the court in which the individual is engaged in the performance of such service.

Provisions of the applicable State law, as used in section 202(a)(3)(D)(iii) of EUCA, means that State law provisions must not be inconsistent with sections 202(a)(3)(C) and 202(a)(3)(E). Therefore, decisions based on State law provisions must not require an individual to take a job which requires traveling an unreasonable distance to work, or which involves an unreasonable risk to the individual's health, safety or morals. Such State law provisions must also include labor standards and training provisions required under sections 3304(a)(5) and 3304(a)(8) of the Internal Revenue Code of 1986 and section 236(d) of the Trade Act of 1974.

Reasonably short period, for the purposes of section 202(a)(3)(C), means the number of weeks provided by the applicable State law.

Regular compensation means compensation payable to an individual under a State law, and, when so payable, includes compensation payable pursuant to 5 U.S.C. chapter 85, but does not include extended compensation or additional compensation.

Regular extended compensation means the benefits payable to an individual for weeks of unemployment which begin in an extended benefit period, under those provisions of a State law which satisfy the requirements of EUCA and this part for the payment of extended unemployment compensation, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation. Regular extended compensation, along with high unemployment extended compensation, are part of the program referred to in this part as Extended Benefits.

Regular EB period means a period in which a state is "on" the EB Program because either the mandatory or optional IUR indicator satisfies the criteria to be "on" and the state is not in a 13-week mandatory "off" period; or the State is "on" the EB Program because the TUR indicator's Trigger Value is at least 6.5 percent and it is at least 110 percent of the Trigger Value for the comparable 3 months in either of the prior 2 years.

Secretary means the Secretary of Labor of the United States.

Sharable compensation means:

(1) Extended compensation paid to an eligible individual under those provisions of a State law which are consistent with EUCA and this part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

(2) Extended compensation paid to an eligible individual under an optional TUR indicator enacted under State law when the State is in a high unemployment period, in accordance with § 615.12(f) of this part, and that does not exceed the smallest of the following:

(i) 80 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 20 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or

(iii) 46 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

(3) Regular compensation paid to an eligible individual for weeks of unemployment in the individual's eligibility period, but only to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to the individual for prior weeks of unemployment in the applicable benefit year, exceeds 26 times and does not exceed 39 times the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to the individual under the State law in such benefit year: Provided, that such regular compensation is paid under provisions of a State law which are consistent with EUCA and this part.

(4) Notwithstanding the preceding provisions of this paragraph, sharable compensation does not include any regular or extended compensation for which a State is not entitled to a payment under section 202(a)(6) or 204 of EUCA or § 615.14 of this part.

State means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

State agency means the State unemployment compensation agency of a State which administers the State law.

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

A systematic and sustained effort, for the purposes of section 202(a)(3)(E), means—

(i) A high level of job search activity throughout the given week, compatible with the number of employers and employment opportunities in the labor market reasonably applicable to the individual,

(ii) A plan of search for work involving independent efforts on the part of each individual which results in contacts with persons who have the authority to hire or which follows whatever hiring procedure is required by a prospective employer in addition to any search offered by organized public and private agencies such as the State employment service or union or private placement offices or hiring halls,

(iii) Actions by the individual comparable to those actions by which jobs are being found by people in the community and labor market, but not restricted to a single manner of search for work such as registering with and reporting to the State employment service and union or private placement offices or hiring halls, in the same manner that such work is found by people in the community,

(iv) A search not limited to classes of work or rates of pay to which the individual is accustomed or which represent the individual's higher skills, and which includes all types of work within the individual's physical and mental capabilities, except that the individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable),

(v) A search by every claimant, without exception for individuals or classes of individuals other than those in approved training, as required under section 3304(a)(8) of the Internal Revenue Code of 1986 or section 236(e) of the Trade Act of 1974,

(vi) A search suspended only when severe weather conditions or other calamity forces suspension of such activities by most members of the community, except that

(vii) The individual, while classified by the State agency as provided in § 615.8(d) as having “good” job prospects, if such individual normally obtains customary work through a hiring hall, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable).

Tangible evidence of an active search for work, for the purposes of section 202(a)(3)(E), means a written record which can be verified, and which includes the actions taken, methods of applying for work, types of work sought, dates and places where work was sought, the name of the employer or person who was contacted and the outcome of the contact.

Total Unemployment Rate means the number of unemployed individuals in a State (seasonally adjusted) divided by the civilian labor force (seasonally adjusted) in the State for the same period.

Trigger Value or *average rate of total unemployment* means the ratio computed using 3 months of the level of seasonally adjusted unemployment in a State in the numerator and 3 months of the level of the seasonally adjusted civilian labor force in the State in the denominator. This rate is used for triggering States “on” and “off” the optional Total Unemployment Rate indicator as described in § 615.12(e).

Week means:

(1) For purposes of eligibility for and payment of extended compensation, a week as defined in the applicable State law.

(2) For purposes of computation of extended compensation “on” and “off” and “no change” indicators and insured unemployment rates and the beginning and ending of an EB Period or a HUP, a calendar week.

Week of unemployment means:

(1) A week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to the Extended Benefit Program as if the individual filing a claim for Extended Benefits were filing a claim for regular compensation, except as provided in paragraph (2) of this definition.

(2) *Week of unemployment* in section 202(a)(3)(A) of the EUCA means a week of unemployment, as defined in paragraph (1) of this definition, for which the individual claims Extended Benefits or sharable regular benefits.

■ 5. Amend § 615.3 by revising the third sentence to read as follows:

§ 615.3 Effective period of the program.

* * * Conformity with EUCA and this part in the payment of regular compensation, regular extended compensation, and high unemployment extended compensation (if State law so provides) to any individual is a continuing requirement, applicable to every week as a condition of a State’s entitlement to payment for any compensation as provided in EUCA and this part.

■ 6. Amend § 615.7 by adding paragraph (b)(3) and revising paragraph (d) introductory text to read as follows:

§ 615.7 Extended Benefits; maximum amount.

* * * * *

(b) * * *

(3) If State law provides, in accordance with § 615.12(e), for a high unemployment period for weeks of unemployment beginning after March 6, 1993, the provisions of paragraph (b)(1) of this section are applied by substituting:

- (i) 80 percent for 50 percent in (b)(1)(i),
- (ii) 20 for 13 in (b)(1)(ii), and
- (iii) 46 for 39 in (b)(1)(iii).

Note to paragraph (b)(3). *Provided*, that if an individual’s extended compensation account is determined in accordance with the provisions of paragraphs (b)(3)(i) through (b)(3)(iii) (for a “high unemployment period” as defined in § 615.2) during the individual’s eligibility period, upon termination of the high unemployment period, such individual’s account must be reduced by the amount in the account that is more than the maximum amount of extended compensation or high extended compensation payable to the individual. *Provided further*, if the account balance is equal to or less than the maximum amount of extended compensation or high unemployment extended compensation payable, there will be no reduction in the account balance upon termination of a high unemployment period. In no case will the individual receive more regular extended compensation or high unemployment extended compensation than the amount determined in accordance with paragraphs (b)(1)(i) through (iii) of this section, nor more extended compensation or high unemployment extended compensation than as provided in paragraphs (b)(2)(i) through (iii) of this section.

* * * * *

(d) *Reduction because of trade readjustment allowances.* Section 233(c) of the Trade Act of 1974 (and section 204(a)(2)(C) of EUCA), requiring a reduction of extended compensation because of the receipt of trade readjustment allowances, must be applied as follows:

* * * * *

■ 7. Amend § 615.8 by revising paragraphs (e)(5)(iii), (f)(2)(i) and (iii), and (h)(3) and (4) to read as follows:

§ 615.8 Provisions of State law applicable to claims.

* * * * *

- (e) * * *
- (5) * * *

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, or any applicable State or local minimum wage, without regard to any exemption elsewhere in those laws, or

* * * * *

- (f) * * *
- (2) * * *

(i) The gross average weekly remuneration for the work for any week does not exceed the sum of the individual’s weekly benefit amount plus any supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to the individual,

* * * * *

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, or any applicable State or local minimum wage, without regard to any exemption elsewhere in those laws, or

* * * * *

- (h) * * *

(3) What kind of jobs he/she must be actively engaged in seeking each week depending on the classification of his/her job prospects, and what tangible evidence of such search must be furnished to the State agency with each claim for benefits. In addition, the State must inform the claimant that he/she is required to apply for and accept suitable work, and

(4) The resulting disqualification if he/she fails to apply for work to which referred, or fails to accept work offered, or fails to actively engage in seeking work or to furnish tangible evidence of such search for each week for which extended compensation or sharable regular benefits is claimed, beginning with the week following the week in which such information shall be furnished in writing to the individual.

■ 8. Revise § 615.11 to read as follows:

§ 615.11 Extended Benefit Periods.

(a) *Beginning date.* Except as provided in paragraph (d) of this section, an extended benefit period or high unemployment period begins in a State on the first day of the third calendar week after a week for which there is a

State “on” indicator in that State under either § 615.12(a) or (b).

(b) *Ending date.* Except as provided in paragraphs (c) and (e) of this section, an extended benefit period or high unemployment period in a State ends on the last day of the third week after the first week for which there is a State “off” indicator in that State, unless another indicator is in “on” status.

(c) *Duration.* When an extended benefit period and/or high unemployment period becomes effective in any State, or triggers “off,” the attained status must continue in effect for not less than 13 consecutive weeks.

(d) *Limitation.* No extended benefit period or high unemployment period may begin or end in any State before the most recent week for which data used to trigger the State “on” or “off” or “no change” indicator has been published.

(e) *Specific applications of the 13-week rule.* (1) If a State concludes a 13-week mandatory “on” period by virtue of the IUR indicator which, at the end of the 13-week period no longer satisfies the requirements for a State to be “on,” the extended benefit period continues if the TUR indicator is “on” during the 11th week of the 13-week mandatory “on” period.

(2) If a State concludes a 13-week mandatory “on” period by virtue of the TUR indicator which, at the end of the 13-week period no longer satisfies the requirements for a State to be “on,” the extended benefit period continues if the IUR indicator is “on” during the 11th week of the 13-week mandatory “on” period.

(f) *Determining if a State remains “off” as a result of a total unemployment rate indicator after the 13-week mandatory “off” period ends.*

(1) The State remains “off” if there is not an IUR “on” indicator the 11th week of the 13-week mandatory “off” period, and there is a TUR “off” indicator for the third week before the last week of the 13-week mandatory “off” period.

- 9. Amend § 615.12 by:
 - a. Revising paragraphs (d)(1) and (2);
 - b. Adding paragraph (d)(3);
 - c. Redesignating paragraph (e) as paragraph (f) and revising it; and
 - d. Adding new paragraph (e).

The additions and revisions read as follows:

§ 615.12 Determination of “on” and “off” indicators.

* * * * *

(d) * * *

(1) Any determination by the head of a State agency of an “on” or “off” or “no change” IUR indicator may not be corrected more than three weeks after the close of the week to which it

applies. If any figure used in the computation of a rate of insured unemployment is later found to be wrong, the correct figure must be used to redetermine the rate of insured unemployment and the 120 percent factor for that week and all later weeks, but no determination of previous “on” or “off” or “no change” indicator shall be affected unless the redetermination is made within the time the indicator may be corrected under the first sentence of this paragraph (d)(1). Any change is subject to the concurrence of the Department as provided in paragraph (e) of this section.

(2) The initial release of the TUR by the Bureau of Labor Statistics (BLS) is subject to revision. However, once a State’s TUR indicator is determined using the initial release of the TUR data, it is not subject to revision even if the BLS TUR for that period of time is revised.

(3) The “on” period under a State’s optional IUR or TUR indicator may not begin before the later of the date of the State’s adoption of the optional insured unemployment rate or total unemployment rate indicator, or the effective date of that enactment. The “off” period under a State’s optional insured unemployment rate or total unemployment rate indicator may not occur until after the effective date of the repeal of the optional insured unemployment rate or total unemployment rate indicator from State law.

(e) *Other optional indicators.* (1) A State may, as an option, in addition to the State indicators in paragraphs (a) and (b) of this section, provide by its law that there is a State “on” or “off” indicator in the State for a week if we determine that—

(i) The Trigger Value in such State computed using the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent; and

(ii) The Trigger Value computed using data from the 3-month period referred to in paragraph (e)(1)(i) of this section equals or exceeds 110 percent of the Trigger Value for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years. This “look-back” is computed by dividing the Trigger Value by the same measure for the corresponding 3 months in each of the applicable prior years, and the resulting decimal fraction is rounded to the hundredths place, multiplied by 100 and reported as an integer and compared to the statutory threshold to help determine the State’s EB Program status; and

(iii) There is a State “off” indicator for a week if either the requirements of paragraph (e)(1)(i) or (ii) of this section are not satisfied.

(2) Where a State adopts the optional indicator under paragraph (e)(1) of this section, there is a State “on” indicator for a high unemployment period (as defined in § 615.2) under State law if—

(i) The Trigger Value in the State computed using the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 8.0 percent, and

(ii) The Trigger Value in the State computed using data from the 3-month period referred to in paragraph (e)(2)(i) of this section equals or exceeds 110 percent of the Trigger Value for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years. This “look-back” is computed by dividing the Trigger Value by the same measure for the corresponding 3 months in each of the applicable prior years, and the resulting decimal fraction is rounded to the hundredths place, multiplied by 100 and reported as an integer and compared to the statutory threshold to help determine the State’s EB Program status; and

(iii) There is a State “off” indicator for high unemployment period for a week if either the requirements of paragraph (e)(2)(i) or (ii) of this section are not satisfied.

(3) *Method of computing the average rate of total unemployment.* The average rate of total unemployment is computed by dividing the average of 3 months of the level of seasonally adjusted unemployment in the State by the average of 3 months of the level of seasonally adjusted unemployment and employment in the State. The resulting rate is multiplied by 100 to convert it to a percentage basis and then rounded to the tenths place (the first digit to the right of the decimal place).

(4) *Method of computing the State “look-back.”* The average rate of total unemployment, ending with a given month, is divided by the same measure for the corresponding 3 months in each of the applicable prior years. The resultant decimal fraction is then rounded to the hundredths place (the second digit to the right of the decimal place). The resulting number is then multiplied by 100 and reported as an integer (no decimal places) and compared to the statutory threshold to help determine the State’s EB Program status.

(f) *Notice to Secretary.* Within 10 calendar days after the end of any week for which the head of a State agency has determined that there is an “on,” or

“off,” or “no change” IUR indicator in the State, the head of the State agency must notify the Secretary of the determination. The notice must state clearly the State agency head’s determination of the specific week for which there is a State “on” or “off” or “no change” indicator. The notice must include also the State agency head’s findings supporting the determination, with a certification that the findings are made in accordance with the requirements of § 615.15. The Secretary may provide additional instructions for the contents of the notice to assure the correctness and verification of notices given under this paragraph. The Secretary will accept determinations and findings made in accordance with the provisions of this paragraph and of any instructions issued under this paragraph. A notice does not become final for purposes of EUCA and this part until the Secretary accepts the notice.

■ 10. Revise § 615.13 to read as follows:

§ 615.13 Announcement of the Beginning and Ending of Extended Benefit Periods or High Unemployment Periods.

(a) *State indicators*—(1) *Extended benefit period*. Upon receipt of a notice required by § 615.12(f) which the Department determines is acceptable, the Department will publish in the **Federal Register** a notice of the State agency head’s determination that there is an “on” or an “off” indicator in the State, as the case may be, the name of the State and the beginning or ending of the extended benefit period, or high unemployment period, whichever is appropriate. If an “on” or “off” EB period is determined by the Department to be based on a State’s TUR Trigger Value, the Department publishes that information in the **Federal Register** as well.

(2) *Notification*. The Department also notifies the heads of all other State agencies, and the Regional Administrators of the Employment and Training Administration of the State agency head’s determination of the State “on” or “off” indicator for an extended benefit period, or high unemployment period (based on the insured unemployment rate in the State), or of the Department’s determination of an “on” or “off” indicator (based on the total unemployment rate in a State) for an extended benefit period or high unemployment period and of the indicator’s effect.

(b) *Publicity by State*. (1) Whenever a State agency head determines that there is an “on” indicator in the State by reason of which an extended benefit period (based on the insured unemployment rate in the State) will

begin in the State, or an “off” indicator by reason of which an extended benefit period in the State (based on the insured unemployment rate) will end, the head of the State agency must promptly announce the determination through appropriate news media in the State after the Department accepts notice from the agency head in accordance with § 615.12(f).

(2) Whenever the head of a State agency receives notification from the Department in accordance with § 615.12(f) that there is an “on” indicator by reason of which an extended benefit period or high unemployment period (based on the total unemployment rate in the State) will begin in the State, or an “off” indicator by reason of which a regular extended benefit period or high unemployment period (based on the total unemployment rate) will end, the head of the State agency must promptly announce the determination through the appropriate news media in the State.

(3) Announcements made in accordance with paragraphs (b)(1) or (b)(2) of this section must include the beginning or ending date of the extended benefit period or high unemployment period, whichever is appropriate. In the case of a regular EB period or high unemployment period that is about to begin, the announcement must describe clearly the unemployed individuals who may be eligible for extended compensation or high extended compensation during the period, and in the case of a regular EB period or high unemployment period that is about to end, the announcement must also describe clearly the individuals whose entitlement to extended compensation or high extended compensation will be terminated. If a high unemployment period is ending, but an extended benefit period will remain “on,” the announcement must clearly state that fact and the effect on entitlement to extended compensation.

(c) *Notice to individuals*. (1) Whenever there has been a determination that a regular extended benefit period or high unemployment period will begin in a State, the State agency must provide prompt written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not end before the beginning of the regular extended benefit period or high unemployment period, and who exhausted all rights under the State law to regular compensation before the beginning of the regular extended benefit period or high unemployment period.

(2) The State agency must provide the notice promptly to each individual who begins to claim sharable regular benefits or who exhausts all rights under the State law to regular compensation during a regular extended benefit period or high unemployment period, including exhaustion by reason of the expiration of the individual’s benefit year.

(3) The notices required by paragraphs (c)(1) and (2) of this section must describe the actions required of claimants for sharable regular compensation and extended compensation and those disqualifications which apply to the benefits which are different from those applicable to other claimants for regular compensation which is not sharable.

(4) Whenever there is a determination that a regular extended benefit period or high unemployment period will end in a State, the State agency must provide prompt written notice to each individual who is currently filing claims for extended compensation of the forthcoming end of the regular extended benefit period or high unemployment period and its effect on the individual’s right to extended compensation.

■ 11. Amend § 615.14 by revising paragraph (c)(4) to read as follows:

§ 615.14 Payments to States.

* * * * *

(c) * * *

(4) As provided in section 204(a)(2)(C) of EUCA, for any week in which extended compensation is not payable because of the payment of trade readjustment allowances, as provided in section 233(c) of the Trade Act of 1974, and § 615.7(d).

* * * * *

■ 12. Revise § 615.15 to read as follows:

§ 615.15 Records and reports.

(a) *General*. State agencies must furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of this part.

(b) *Recordkeeping*. Each State agency must make and maintain records pertaining to the administration of the Extended Benefit Program as the Department requires, and must make all such records available for inspection, examination and audit by such Federal officials or employees as the Department

may designate or as may be required by law.

Portia Wu

Assistant Secretary for Employment and Training.

[FR Doc. 2016-18382 Filed 8-23-16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 11, 16, 106, 110, 111, 112, 114, 117, 120, 123, 129, 179, 211, and 507

[Docket Nos. FDA-2011-N-0920, FDA-2011-N-0921, FDA-2011-N-0922, FDA-2011-N-0143]

RIN 0910-AG10, 0910-AG35, 0910-AG36, 0910-AG64

The Food and Drug Administration Food Safety Modernization Act; Extension and Clarification of Compliance Dates for Certain Provisions of Four Implementing Rules

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension and clarification of compliance dates for certain provisions.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the dates for compliance with certain provisions in four final rules. We are extending the compliance dates to address concerns about the practicality of compliance with certain provisions, consider changes to the regulatory text, and better align compliance dates across the rules. In addition, we are clarifying certain compliance dates in the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption rule.

DATES: This final rule is effective August 24, 2016. See sections III.C, IV.A.2, IV.B, and V through VIII for the extended compliance dates.

FOR FURTHER INFORMATION CONTACT:

For questions relating to Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS-300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2166.

For questions relating to Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals: Jeanette Murphy, Center for Veterinary Medicine

(HFV-200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-402-6246.

For questions relating to Foreign Supplier Verification Programs for Importers of Food for Humans and Animals: Rebecca Buckner, Office of Food and Veterinary Medicine, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-4576.

For questions relating to Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Samir Assar, Center for Food Safety and Applied Nutrition (HFS-317), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1636.

SUPPLEMENTARY INFORMATION:

I. Background: The Four Related Rules Implementing the FDA Food Safety Modernization Act

This extension and clarification of compliance dates concerns four of the seven foundational rules that we have established in Title 21 of the Code of Federal Regulations (21 CFR) as part of our implementation of the FDA Food Safety Modernization Act (FSMA; Pub. L. 111-353). The four final rules are entitled “Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food” (published in the **Federal Register** of September 17, 2015, 80 FR 55908) (<http://www.fda.gov/fsma>); “Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals” (published in the **Federal Register** of September 17, 2015, 80 FR 51670) (<http://www.fda.gov/fsma>); “Foreign Supplier Verification Programs for Importers of Food for Humans and Animals” (published in the **Federal Register** of November 27, 2015, 80 FR 74226) (<http://www.fda.gov/fsma>); and “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption” (published in the **Federal Register** of November 27, 2015, 80 FR 74354) (<http://www.fda.gov/fsma>).

In part 117 (21 CFR part 117), we have established our regulation entitled “Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food” (80 FR 55908, September 17, 2015). Among other things, the rulemaking to establish part 117 amended our current good manufacturing practice (CGMP) regulation for manufacturing, packing, or holding human food to modernize it and establish it in new part 117, subparts A, B, and F. Part 117 also includes new requirements for domestic

and foreign facilities that are required to register under section 415 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350d) in subparts A, C, D, E, F, and G to establish and implement hazard analysis and risk-based preventive controls for human food (the human food preventive controls requirements). In the preamble of the final rule establishing part 117, we stated that the rule is effective November 16, 2015, and provided for compliance dates of 1 to 3 years from the date of publication in most cases (see table 53 in the preamble of the final rule establishing part 117, 80 FR 55908 at 56128). In the rulemaking to establish part 117, we also amended the “farm” definition in our regulations implementing section 415 of the FD&C Act (the section 415 registration regulation; 21 CFR part 1, subpart H) to clarify the scope of the exemption from registration requirements provided for “farms” and, in so doing, to clarify which human food establishments are subject to the human food preventive controls requirements, and which human food establishments are exempt from those requirements because they are “farms.”

In part 507 (21 CFR part 507), we have established our regulation entitled “Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals” (80 FR 56170, September 17, 2015). Among other things, the rulemaking to establish part 507 established new requirements for CGMPs in subparts A, B, and F (CGMP requirements) and also established requirements for hazard analysis and risk-based preventive controls for food for animals in subparts A, C, D, E, and F (the animal food preventive controls requirements). The part 507 requirements apply to domestic and foreign facilities that are required to register under the section 415 registration regulation and, thus, the “farm” definition that we amended as part of the rulemaking to establish part 117 also clarifies which animal food establishments are subject to the part 507 requirements, and which animal food establishments are exempt from those requirements because they are “farms.” In the preamble of the final rule establishing part 507, we stated that the rule is effective November 16, 2015 (80 FR 56170). We provided for compliance dates of 1 to 3 years from the date of publication in most cases for compliance with the CGMP requirements, with an additional year beyond that for compliance with the animal food preventive controls