charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.[68] The revisions adopted in this Final Rule would update and clarify the application of the Commission's standard interconnection requirements to small generating facilities.

58. Therefore, this Final Rule falls within the categorical exemptions provided in the Commission's regulations, and as a result neither an Environmental Impact Statement nor an Environmental Assessment is required.

VIII. Document Availability

59. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

60. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

61. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

62. The Final Rule is effective October 5, 2016. However, as noted above, the requirements of this Final Rule will apply only to all newly interconnecting small generating facilities that execute or request the unexecuted filing of an SGIA on or after the effective date of this Final Rule as well as existing interconnection customers that, pursuant to a new interconnection request, execute or request the unexecuted filing of a new or modified SGIA on or after the effective date. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this Final Rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, Government Accountability Office, and Small Business Administration.

By the Commission.

Issued: July 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The following Attachment will not appear in the Code of Federal Regulations.

Appendix A—List of Substantive Commenters (RM16–8–000)

Bonneville Bonneville Power Administration
Trade Associations Edison Electric Institute/American Public Power Association/Large Public Power Council/National Rural Electric Cooperative Association
EPRI Electric Power Research Institute
Idaho Power Idaho Power Company
IEEE Institute of Electrical and Electronics Engineers
ISO/RTO Council ISO/RTO Council
NERC North American Electric Reliability Corporation
PG&E Pacific Gas and Electric Company
Peak Reliability Peak Reliability
PNM Public Service Company of New Mexico
SoCal Edison Southern California Edison Company

In addition, Entergy Services, Inc. submitted non-substantive comments.

[FR Doc. 2016–17843 Filed 7–29–16; 8:45 am]

BILLING CODE 6717–01–P

[68] 18 CFR 380.4(a)(15).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 620

RIN 1205–AB63

Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the U.S. Department of Labor (Department) is issuing this final rule to establish, for State Unemployment Compensation (UC) program purposes, occupations that regularly conduct drug testing. These regulations implement the Middle Class Tax Relief and Job Creation Act of 2012 (the Act) amendments to the Social Security Act (SSA), permitting States to enact legislation that would allow State UC agencies to conduct drug testing on UC applicants for whom suitable work (as defined under the State law) is available only in an occupation that regularly conducts drug testing (as determined under regulations issued by the Secretary of Labor (Secretary)). States may deny UC to an applicant who tests positive for drug use under these circumstances. The Secretary is required under the SSA to issue regulations determining those occupations that regularly conduct drug testing.

DATES: *Effective Date:* This final rule is effective September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Suzanne Simonetta, Office of Unemployment Insurance, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4524, Washington, DC 20210; telephone: (202) 693–3225 (this is not a toll-free number); email: *simonetta.suzanne@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 2014, The Department published a Notice of Proposed Rulemaking (NPRM) concerning occupations that regularly conduct drug testing at 79 FR 61013. The Department invited comments through December 8, 2014.

II. General Discussion of the Final Rule

On February 22, 2012, President Obama signed the Act, Public Law 112–96. Title II of the Act amended section 303, SSA, to add a new subsection (l) permitting States to drug test UC applicants as a condition of UC eligibility under two circumstances. The first circumstance is if the applicant was terminated from employment with the applicant's most recent employer because of the unlawful use of a controlled substance. (Section 303(l)(1)(A)(i), SSA.) The second circumstance is if the only available suitable work (as defined in the law of the State conducting the drug testing) for an individual is in an occupation that regularly conducts drug testing (as determined in regulations by the Secretary). If an applicant who is tested for drug use under either circumstance tests positive, the State may deny UC to

that applicant. On October 9, 2014, the Department published a Notice of Proposed Rulemaking (NPRM) concerning occupations that regularly conduct drug testing at 79 FR 61013. The NPRM proposed that occupations that regularly drug test be defined as those required to be drug tested in Federal or State laws at the time the NPRM was published. The NPRM also defined key terms:

- An ''applicant'' means an individual who files an initial claim for UC.
- ''Controlled substance'' is defined by reference to the definition of the term in Section 102 of the Controlled Substances Act. (This definition is in the Act.)
- ''Suitable work'' means suitable work as defined under the UC law of the State against which the claim is filed. It must be the same definition that the State otherwise uses for determining UC eligibility based on seeking work or refusal of work for an initial applicant for UC.
- Occupation means a position or class of positions.
- ''Unemployment compensation'' is defined as ''cash benefits payable to an individual with respect to their unemployment under the State law.'' This definition derives from the definition found in Federal UC law at Section 3306(h), FUTA.

The Department invited comments through December 8, 2014. This final rule defines those occupations that regularly conduct drug testing as required by section 303(l)(1)(A)(ii), SSA. The Department, separately from this rulemaking, issued guidance (Unemployment Insurance Program Letter (UIPL) No. 1–15) to States to address other issues related to the implementation of drug testing under 303(l), SSA.

III. Summary of the Comments

Comments Received on the Proposed Rule

The Department received sixteen (16) comments (by letter or through the Federal e-Rulemaking Portal) by the close of the comment period. Ten (10) of the comments were from individuals; one was from an employer advocacy group; one was from an industry association; one was from a worker advocacy group; and three (3) were from governmental officials or committees. The Department considered all timely comments and included them in the rulemaking record. There were no late comments.

These comments are discussed below in the Discussion of Comments. We address only those comments addressing the scope and purpose of the rule, the identification of occupations that regularly conduct drug testing. Therefore, comments received concerning the Department's previously issued guidance about drug testing in UIPL No. 1–15; comments supporting or opposing drug testing in general; and comments about drug testing procedures, the efficacy of drug tests, and the cost of drug tests, are not addressed as these issues fall outside the scope of the statutory requirement that is the basis for this regulation. We made one change, discussed below, in response to the comments.

Discussion of Comments

A number of commenters opposed the limitation on the list of occupations requiring drug testing. Three commenters wrote that limiting the list of occupations requiring drug testing to those identified in Federal or State laws that were in effect on the date of publication of the NPRM (October 9, 2014) was not appropriate. Of those, one wrote it was uncertain if future amendments to the Federal regulations would incorporate future State law enactments mandating testing. One wrote that States would not be given sufficient time to enact legislation to add any occupations to the list already established by Federal or State law, and the public interest would be served by a broader interpretation of ''regularly conducting drug testing.'' One wrote it was an unnecessary obstacle to States using drug screening and testing to improve the chances that unemployed workers are ready to return to work.

One commenter wrote that the limitation was appropriate in order to provide the ability to assess the cost effectiveness of implementing drug testing in the UC program and that to do otherwise would circumvent the intent of Congress to limit authority to drug test to a small pool of workers for whom, because of their job requirements, drug testing is directly related to continued employment. The commenter asserted it was not the intent of Congress to cover a more expansive segment of the workforce, such as those subject to pre-employment screening.

The Department agrees with the commenters that the rule should not limit the list of occupations requiring drug testing, set forth in the NPRM, to those identified in specified Federal laws or those State laws that were in effect on the date of publication of the NPRM; thus, this provision is revised in the final rule to broaden its applicability as requested by commenters. In a dynamic economy, occupations change over time, sometimes rapidly, and new occupations are created, and it is important that this rule contain the flexibility necessary to allow States and the Federal government to adapt to those changes. Thus, the regulation has been expanded to encompass any Federal or State law requiring drug testing regardless of when enacted. Specifically, section 620.3(h) has been revised to specify that occupations that regularly conduct drug testing include any ''occupation specifically identified in a State or Federal law as requiring an employee to be tested for controlled substances.'' In recognition of the fact that new federal laws may be enacted that may require drug testing for other occupations, and that those occupations may not necessarily be included in § 620.3(a)–(g), the Department added ''Federal law'' to § 620.3(h). This additional change ensures the final rule is consistent with the policy change being made in response to the comments. Additionally, the final rule eliminates the reference to dates where the proposed rule referenced State law and the specified Federal regulations in § 620.3(a)–(g). The Department will monitor changes in Federal law that affect the definition of ''occupations'' for which drug testing is required and inform States of any changes through guidance.

There is no evidence of Congressional intent for the legislation to permit testing on any basis other than the plain language of the statute, *i.e., occupations* that regularly test for drugs. However, the Department agrees that changes to those occupations for which Federal or State law require drug testing should be accommodated by the regulation.

One commenter wrote that the proposed rule in Section 620.4(a), that drug testing is permitted only of an applicant, and not of an individual filing a continued claim for unemployment compensation after initially being determined eligible, would unduly limit drug testing to only the period after an applicant files an initial claim and before the applicant files a continued claim for unemployment compensation.

The plain language of Section 303(l), SSA, limits permissible drug testing to applicants for UC. ''Applicants'' are individuals who have submitted an initial application for UC. Once individuals have been determined eligible to receive UC, they are no longer applicants for UC. The act of certifying that certain conditions are met to maintain eligibility is different than making an application for UC benefits. This is illustrated throughout Title III, SSA. Section 303(h)(3)(B), SSA,

requiring UC information disclosures to the Department of Health and Human Services, and Section 303(i)(1)(A)(ii)), SSA, requiring UC information disclosures to the Department of Housing and Urban Development, both refer to an individual who ''has made application for'' UC, distinguishing them from an individual who ''is receiving'' or ''has received'' UC. Similarly, Section 303(d)(2)(B), SSA, and Section 303(e)(2)(A), SSA, both refer to a ''new applicant'' for UC and then use the term ''applicant'' throughout the remainder of the subsection, signifying that the term is used to denote only an individual applying for UC for the first time. Thus, those provisions clarify that, as used in Section 303, SSA, an applicant is not a continuing claimant. Similarly, Section 303(l)(1)(B), SSA, permits the denial of UC based on the results of a drug test only to ''applicants,'' not as a condition of continued eligibility. As these provisions demonstrate, ''applicant'' refers to an initial claimant, not a continuing claimant; therefore, the final rule includes no changes to the requirements of Section 620.4(a).

Two commenters wrote that the rule arbitrarily narrows the definition of ''occupations that regularly test for drugs'' so that the potential number of applicants affected is negligible. They also noted that businesses regularly conduct drug testing in occupations without Federal or State mandate. For this reason, they believe the definition ''occupations that regularly conduct drug testing'' should include occupations for which employers already conduct drug testing outside those mandated by State or Federal law.

Section 303(l)(1)(A)(ii), SSA, requires the Secretary to identify those ''occupations,'' not employers, that regularly conduct drug testing. As explained in the NPRM, whether an occupation is subject to ''regular'' drug testing in private employment was not chosen as the standard here because it would be very difficult to implement in a consistent manner. Drug testing in occupations where it is not required by law is not consistent across employers, across industries, across the States, or over time; thus, we are unable to reliably and consistently determine which occupations require ''regular'' drug testing where not required by law. Even if certain employers do conduct drug testing for certain occupations when permitted to do so, that is not sufficient to show that those occupations are subject to regular drug testing because a significant number of employers may not drug test individuals working in those occupations. In addition, those employers who conduct drug testing when they are not required by law to do so do not necessarily limit the testing to applicants or employees working in a specific occupation. The determination by an employer to drug-test all of its employees is not a determination that all of the occupations in which its employees fall are occupations for which drug testing is appropriate, under the requirements of this rule, but rather a determination in keeping with that employer's beliefs about its business needs that drug testing is appropriate for all of its employees.

The final rule will permit States to require drug testing for UC eligibility for occupations that are subjected under State law to drug testing after the date of the NPRM publication, which ensures that there is flexibility for States to require drug testing for other occupations, while still providing predictability and consistency in identifying in this final rule what occupations are ''regularly'' drug tested. Thus, the Department has not changed the rule to address this concern.

One commenter wrote that the proposed rules would impose an unnecessary burden on the State agency to determine whether ''suitable work'' in a specific occupation is available in the local labor market.

The comment appears to misunderstand the proposed rule, which requires only that a State use the same definition of ''suitable work'' for UC drug testing as otherwise used in State UC law. The rule does not use the term ''local labor market'' when addressing suitable work. State UC agencies routinely make eligibility determinations about availability for work, search for work, and refusal of offers of suitable work. Whether work is available in the local labor market for UC claimants is one criterion for determining what constitutes ''suitable'' work under State UC law in some States, but this rule does not require it. For drug testing, section 303(l)(1)(A)(ii), SSA, provides, as one of the two permissible reasons for drug testing as a condition for the receipt of UC, that the applicant ''is an individual for whom suitable work (as defined under the State law) is only available in an occupation that regularly conducts drug testing . . . '' [Emphasis added.] Thus, the NPRM required that drug testing is permitted only if the applicant's only suitable work requires it as a condition of employment. Because the rule's definition of ''suitable work'' allows the States to apply their own current laws, the definition of suitable work in the proposed rule would not impose any burden on States, and the Department has not changed the definition in the final rule.

One commenter wrote that the proposed rule, by limiting the scope of permissible drug testing, contradicts Congressional intent and the practices of many American businesses and the best interests of American workers.

The Department drafted the NPRM to be consistent with the language of the statute. The scope of drug testing contemplated in the NPRM is consistent with the statutory language; there is no evidence of Congressional intent in the legislative history which would require it to be interpreted more broadly than the Department interprets it in this regulation. Therefore, the Department declines to expand the scope of drug testing in this rule.

IV. Administrative Information

Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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] This regulation is necessary because of the statutory requirement contained in new section 303(l)(1)(A)(ii), SSA, which requires the Secretary to determine the occupations that regularly conduct drug testing for the purpose of determining which applicants may be drug tested when applying for State unemployment compensation. OMB has determined that this rule is ''significant'' as defined in section 3(f) of E.O. 12866. Before the amendment of Federal law to add new section 303(l)(1), SSA, drug testing of applicants for UC as a condition of eligibility was prohibited.

However, the Department has determined that this final rule is not an economically significant rulemaking within the definition of E.O. 12866 because it is not an action that is likely to result in the following: An annual

[1] Executive Order No. 12866, section 6(a)(3)(B).

effect on the economy of $100 million or more; an adverse or material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; serious inconsistency or interference with an action taken or planned by another agency; or a material change in the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof. In addition, since the drug testing of UC applicants as a condition of UC eligibility is entirely voluntary on the part of the States, and since Section 303(l), SSA, is written narrowly, the Department believes that it is unlikely that many States will establish a testing program because they will not deem it cost effective to do so. The Department sought comment from interested stakeholders on this assumption. We received no comments on this topic.

There are limited data on which to base estimates of the cost associated with establishing a testing program. Only one of the two States that have enacted a conforming drug testing law issued a fiscal note. That State is Texas, which estimated that the 5-year cost of administering the program would be $1,175,954. This includes both one-time technology personnel services for the first year to program the State UI computer system and ongoing administrative costs for personnel. The Texas analysis estimated a potential savings to the Unemployment Trust Fund of $13,700,580 over the 5-year period, resulting in a net savings of approximately $12.5 million. The Department believes it would be inappropriate to extrapolate the Texas analysis to all States in part because of differences in the Texas law and the requirements in this final rule. The Department has included this information about Texas for illustrative purposes only and emphasizes that by doing so, it is not validating the methodology or assumptions in the Texas analysis. Under the rule, States are prohibited from testing applicants for unemployment compensation who do not meet the narrow criteria established in the law. The Department requested that interested stakeholders with data on the costs of establishing a state-wide testing program; the number of applicants for unemployment compensation that fit the narrow criteria established in the law; and estimates of the number of individuals that would subsequently be denied unemployment compensation due to a failed drug test submit it during the comment period. We received no comments that provided the requested information.

In the absence of data, the Department is unable to quantify the administrative costs States will incur if they choose to implement drug testing under this rule. States may need to find funding to implement a conforming drug testing program for unemployment compensation applicants. No additional funding has been appropriated for this purpose and current Federal funding for the administration of State unemployment compensation programs may be insufficient to support the additional costs of establishing and operating a drug testing program. States will need to fund the cost of the drug tests, staff costs for administration of the drug testing function, and technology costs to track drug testing outcomes. States will incur ramp up costs that will include implementing business processes necessary to determine whether an applicant is one for whom drug testing is permissible under the law; developing a process to refer and track applicants referred for drug testing; and the costs of testing that meets the standards required by the Secretary of Labor. States will also have to factor in increased costs of adjudication and appeals of both the determination of applicability of the drug testing to the individual and of the resulting determinations of benefit eligibility based on the test results.

The benefits of the rule are equally hard to determine. As discussed above, because permissible drug testing is limited under the statute and this rule, the Department of Labor believes that the provisions will impact a very limited number of applicants for unemployment compensation benefits. Only one State has estimated savings from a drug testing program in a fiscal note and the Department cannot and should not extrapolate results from those estimates.

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, a brief description of the need for and proposed use of the information, and a request for comments on the information collections.

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).

The Department has determined that this final rule does not contain a ''collection of information,'' as the term is defined. *See* 5 CFR 1320.3(c). The Department received no comments on this determination.

Executive Order 13132: Federalism

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

This final rule 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. This is because drug testing authorized by the regulation is voluntary on the part of the State, not required.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (the 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 that since States have an option of drug testing UC applicants and can elect not to do so, this final rule does not include any Federal mandate that could result in increased expenditure by State, local, and Tribal governments. Drug testing under this rule is purely voluntary, so that any increased cost to the States is not the result of a Federal mandate. Accordingly, it is unnecessary for the

Department to prepare a budgetary impact statement.

Plain Language

The Department drafted this final rule in plain language.

Effect on Family Life

The Department certifies that this final rule has been assessed 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. The Department certifies that this final rule does not adversely impact family well-being as discussed under section 654 of the Treasury and General Government Appropriations Act of 1999.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

The 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 proposed or final rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This final rule does not affect small entities as defined in the RFA. Therefore, the rule will not have a significant economic impact on a substantial number of these small entities. The Department has certified this to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act.

List of Subjects in 20 CFR Part 620

Unemployment compensation.

For the reasons stated in the preamble, the Department amends 20 CFR chapter V by adding part 620 to read as follows:

PART 620—OCCUPATIONS THAT REGULARLY CONDUCT DRUG TESTING FOR STATE UNEMPLOYMENT COMPENSATION ELIGIBILITY DETERMINATION PURPOSES

Sec.

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 503(l)(1)(ii)

§ 620.1 Purpose.

The regulations in this part implement section 303(l) of the Social Security Act (SSA) (42 U.S.C. 503(l)). Section 303(l), SSA, permits States to enact legislation to provide for the State-conducted testing of an unemployment compensation applicant for the unlawful use of controlled substances, as a condition of unemployment compensation eligibility, if the applicant was discharged for unlawful use of controlled substances by his or her most recent employer, or if suitable work (as defined under the State unemployment compensation law) is only available in an occupation for which drug testing is regularly conducted (as determined under this part 620). Section 303(l)(1)(A)(ii), SSA, requires the Secretary of Labor to issue regulations determining the occupations that regularly conduct drug testing. These regulations are limited to that requirement.

§ 620.2 Definitions.

As used in this part—

Applicant means an individual who files an initial claim for unemployment compensation under State law. *Applicant* excludes an individual already found initially eligible and filing a continued claim.

Controlled substance means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of 21 U.S.C. 801 *et seq.,* as defined in section 102 of the Controlled Substances Act (Pub. L. 91–513, 21 U.S.C. 801 *et seq.*). The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

Occupation means a position or class of positions. Federal and State laws governing drug testing refer to the classes of positions that are required to be drug tested rather than occupations, such as those defined by the Bureau of Labor Statistics in the Standard Occupational Classification System. Therefore, for purposes of this regulation, a position or class of positions will be considered the same as an ''occupation.''

Suitable work means suitable work as defined by the unemployment compensation law of a State against which the claim is filed. It must be the same definition the State law otherwise uses for determining the type of work an individual must seek given the individual's education, experience and previous level of remuneration.

Unemployment compensation means any cash benefits payable to an individual with respect to their unemployment under the State law (including amounts payable under an agreement under a Federal unemployment compensation law.)

§ 620.3 Occupations that regularly conduct drug testing for purposes of determining which applicants may be drug tested when applying for state unemployment compensation.

Occupations that regularly conduct drug testing, for purposes of § 620.4, are:

(a) An occupation that requires the employee to carry a firearm;

(b) An occupation identified in 14 CFR 120.105 by the Federal Aviation Administration, in which the employee must be tested (Aviation flight crew members and air traffic controllers);

(c) An occupation identified in 49 CFR 382.103 by the Federal Motor Carrier Safety Administration, in which the employee must be tested (Commercial drivers);

(d) An occupation identified in 49 CFR 219.3 by the Federal Railroad Administration, in which the employee must be tested (Railroad operating crew members);

(e) An occupation identified in 49 CFR 655.3 by the Federal Transit Administration, in which the employee must be tested (Public transportation operators);

(f) An occupation identified in 49 CFR 199.2 by the Pipeline and Hazardous Materials Safety Administration, in which the employee must be tested (Pipeline operation and maintenance crew members);

(g) An occupation identified in 46 CFR 16.201 by the United States Coast Guard, in which the employee must be tested (Crewmembers and maritime credential holders on a commercial vessel);

(h) An occupation specifically identified in a State or Federal law as requiring an employee to be tested for controlled substances.

§ 620.4 Testing of unemployment compensation applicants for the unlawful use of a controlled substance.

(a) States may conduct a drug test on an unemployment compensation applicant, as defined in § 620.2, for the unlawful use of controlled substances, as defined in § 620.2, as a condition of eligibility for unemployment compensation if the individual is one

for whom suitable work, as defined in State law, as defined in § 620.2, is only available in an occupation that regularly conducts drug testing under § 620.3. Drug testing is permitted only of an applicant, and not of an individual filing a continued claim for unemployment compensation after initially being determined eligible. No State is required to apply drug testing to UC applicants under this part 620.

(b) A State conducting drug testing as a condition of unemployment compensation eligibility as provided in paragraph (a) of this section may apply drug testing only to the occupations listed under § 620.3, but is not required to apply drug testing to any of them.

(c) State standards governing drug testing of UC applicants must be in accordance with guidance, in the form of program letters or other issuances, issued by the Department of Labor.

§ 620.5 Conformity and substantial compliance.

(a) *In general.* A State law implementing the drug testing of applicants for unemployment compensation must conform with, and the law's administration must substantially comply with, the requirements of this part 620 for purposes of certification under Section 302 of the SSA (42 U.S.C. 502), of whether a State is eligible to receive Federal grants for the administration of its UC program.

(b) *Resolving issues of conformity and substantial compliance.* For the purposes of resolving issues of conformity and substantial compliance with the requirements of this part 620, the following provisions of 20 CFR 601.5 apply:

(1) Paragraph (b) of 20 CFR 601.5, pertaining to informal discussions with the Department of Labor to resolve conformity and substantial compliance issues, and

(2) Paragraph (d) of 20 CFR 601.5, pertaining to the Secretary of Labor's hearing and decision on conformity and substantial compliance.

(c) *Result of failure to conform or substantially comply.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC agency, finds that the State UC law fails to conform, or that the State or State UC agency fails to comply substantially, with the requirements of title III, SSA (42 U.S.C. 501–504), as implemented in this part 620, then the Secretary of Labor must notify the Governor of the State and such State UC agency that further payments for the administration of the State UC law will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Department of Labor will not make further payments to such State.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2016–17738 Filed 7–29–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 11 and 101

[Docket No. FDA–2011–F–0171]

RIN 0910–AG56

Food Labeling; Calorie Labeling of Articles of Food in Vending Machines; Extension of Compliance Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the compliance date for certain requirements in the final rule requiring disclosure of calorie declarations for food sold from certain vending machines. The final rule appeared in the **Federal Register** of December 1, 2014. We are taking this action in response to requests for an extension and for reconsideration of the rule's requirements pertaining to the size of calorie disclosures on front-of-package labeling.

DATES: *Effective date:* This final rule is effective December 1, 2016.

Compliance date: The compliance date for type size front-of-pack labeling requirements (§ 101.8(b)(2) (21 CFR 101.8(b)(2))) and calorie disclosure requirements (§ 101.8(c)(2)) for certain gums, mints, and roll candy products in glass-front machines in the final rule published December 1, 2014 (79 FR 71259) is extended to July 26, 2018. The compliance date for all other requirements in the final rule (79 FR 71259) remains December 1, 2016.

FOR FURTHER INFORMATION CONTACT: April Kates, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371, email: *april.kates@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 1, 2014 (79 FR 71259), we published a final rule establishing requirements for providing calorie declarations for food sold from certain vending machines. The final rule, which is codified primarily at § 101.8, will ensure that calorie information is available for certain food sold from a vending machine that does not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the article, or does not otherwise provide visible nutrition information at the point of purchase. The declaration of accurate and clear calorie information for food sold from vending machines will make calorie information available to consumers in a direct and accessible manner to enable consumers to make informed and healthful dietary choices. The final rule applies to certain food from vending machines operated by a person engaged in the business of owning or operating 20 or more vending machines. Vending machine operators not subject to the rules may elect to be subject to the Federal requirements by registering with FDA.

The final rule also specifies how calories must be declared. In brief,

- Vending machine operators do not have to declare calorie information for a food if a prospective purchaser can view certain calorie information on the front of the package, in the Nutrition Facts label on the food, or in a reproduction of the Nutrition Facts label on the food subject to certain requirements, or if the vending machine operator does not own or operate 20 or more vending machines.
- Calorie declarations must be clear and conspicuous and placed prominently, and may be placed on a sign in, on, or adjacent to the vending machine, so long as the sign is in close proximity to the article of food or selection button.
- The final rule establishes type size, color, and contrast requirements for calorie declarations in or on the vending machines, and for calorie declarations on signs adjacent to the vending machines.
- The final rule establishes requirements for calorie declarations on electronic vending machines, those vending machines with only pictures or names of the food items, and those vending machines with few choices (*e.g.,* popcorn machines).

The final rule also requires vending machine operator contact information to be displayed for enforcement purposes.

The final rule implements provisions of section 403(q)(5)(H) of the Federal