deliberations on all issues. Like all Committee meetings, the July 14, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on December 12, 2012 (77 FR 73961). Copies of the rule were mailed or sent via facsimile to all Committee members and Florida citrus handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 11, 2013, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because Committee nominations are scheduled to be held in the spring, and these changes need to be in effect in advance so that industry stakeholders are familiar with the new grower districts, reapportionment, and qualifications prior to the nomination process. Further, to be effective for the next nomination cycle, the order requires that the redistricting and reapportionment actions be announced on or before March 1, 2013. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.114 is revised to read as follows:

§ 905.114 Redistricting of citrus districts and reapportionment of grower members.

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) Citrus District One shall include the counties of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Duval, Flagler, Gilchrist, Hernando, Hillsborough, Lake, Levy, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, Sumter, Suwannee, and Union and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. This district shall have two grower members and alternates.

(b) Citrus District Two shall include the counties of Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Monroe, Okeechobee, Sarasota, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. This district shall have three grower members and alternates.

(c) Citrus District Three shall include the County of St. Lucie and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district shall have four grower members and alternates.

■ 3. In § 905.120, add paragraph (g) to read as follows:

§ 905.120 Nomination procedure.

* * * * *

(g) Up to four grower members may be growers who are also shippers, or growers who are also employees of shippers.

Dated: February 25, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–04787 Filed 2–28–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AB51

Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rules.

SUMMARY: This document contains final rules under Title I of the Employee Retirement Income Security Act (ERISA) that implement reporting requirements for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide benefits that consist of medical care (within the meaning of section 733(a)(2) of ERISA and 29 CFR 2590.701–2) for employees of two or more employers. These final rules amend the existing Form M–1 reporting rules by incorporating new provisions enacted as part of the Patient Protection and Affordable Care Act (the ''Affordable Care Act''). They also amend existing Form 5500 annual reporting rules for ERISA-covered plans subject to Form M–1 reporting rules. Elsewhere in this edition of the **Federal Register**, the Employee Benefits Security Administration is publishing final rules related to the Secretary of Labor's new enforcement authority with respect to MEWAs, a notice adopting final revisions to the Form 5500 Annual Return/Report and its instructions to add new Form M–1 compliance questions, as well as an additional notice announcing the finalized revisions to the Form M–1 and its instructions. These improvements in reporting, together with stronger enforcement tools authorized by the Affordable Care Act, are designed to reduce MEWA fraud and abuse, protecting consumers from unpaid medical bills.

DATES: *Effective date.* These final rules are effective on April 1, 2013. *Applicability dates:* These final rules pertaining to Form M–1 filings generally apply for all filing events beginning on or after July 1, 2013, except that in the case of the 2012 Form M–1 annual report, the deadline is now May 1, 2013 with an extension until July 1, 2013 available. The rules pertaining to Form 5500 annual reporting will be applicable for all Form 5500 Annual Return/Report filings beginning with the 2013 Form 5500.

FOR FURTHER INFORMATION CONTACT: Allison Goodman or Suzanne Bach, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). Information on health reform can be found at *http://www.healthcare.gov*.

I. Executive Summary

A. Purpose of the Regulatory Action

1. Need for Regulatory Action

ERISA section 101(g), 29 U.S.C. 1021(g), as amended by the Affordable Care Act, directs the Department of Labor (the Department) to promulgate rules requiring MEWAs that are not group health plans (non-plan MEWAs) to register with the Secretary of Labor (the Secretary) prior to operating in a State. The statute also allows the Department to promulgate rules requiring non-plan MEWAs to report annually for the purpose of determining the extent to which the requirements of ERISA part 7 are being carried out in connection with such benefits. While the statutory authority is directed at non-plan MEWAs, the Department asserts its authority under ERISA sections 505, 29 U.S.C. 1135, 104, 29 U.S.C. 1024(b), and 734, 29 U.S.C. 1191c, consistent with the MEWA annual reporting rule promulgated in 2003 (the 2003 rule or 2003 regulation), to apply these filing requirements to MEWAs which are group health plans (plan MEWAs) as well.

The Form M–1 and the MEWA reporting requirements were originally developed under the 2003 rule and used as a mechanism to help States identify MEWAs in order to combat a history of MEWA fraud and abuse. Despite these reporting rules, MEWA abuses persist and often lead to insolvency.[1] As a result, affected employees and their dependents become financially responsible for medical claims even though they previously paid premiums to MEWAs for their medical coverage.[2] These regulations amend the 2003 rule and establish new registration and reporting requirements under the amended section 101(g) of ERISA. Specifically, these final rules establish filing requirements and deadlines that apply to MEWAs annually and upon specified events.

The statute is detailed but not self-implementing, contains ambiguities, and specifically requires the Department to develop regulations. Therefore, these consumer protections cannot be established without these regulations.

2. Legal Authority

The substantive authority for these regulations is generally ERISA section 101(g), which explicitly requires the Department to issue regulations requiring MEWAs to register with the Secretary prior to operating in a State. It further provides the Secretary with authority to issue regulations requiring MEWAs to report annually on their compliance with part 7 of ERISA. Section 505 of ERISA also gives the Secretary authority to prescribe such regulations as necessary or appropriate to carry out the provisions of Title I of ERISA, which includes the amended ERISA section 101(g). Further, ERISA section 734 authorizes the Secretary to promulgate regulations necessary or appropriate to carry out the provisions of ERISA part 7.

In addition, section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I or provide for simplified reporting and disclosure if she finds that such requirements are inappropriate as applied to welfare plans.

B. Summary of the Major Provisions of This Regulatory Action

Paragraph (a) of § 2520.101–2 in these final rules implements the general registration and reporting requirements and explains which entities are required to file. The regulations explain that while the language in section 101(g) of ERISA only applies to non-plan MEWAs, the regulations preserve the structure promulgated as part of the 2003 rule, which required both plan MEWAs and non-plan MEWAs to file the Form M–1 based on authority found in sections 505 and 734 of ERISA.

Paragraph (b) defines the terms used in the final regulations, with some additions and modifications from the 2003 rule. Paragraph (c) sets forth the requirement that, with certain exceptions, the administrators of MEWAs and certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to as Entities Claiming Exception or ECEs) file reports with the Department.

Paragraph (d) describes how MEWAs and ECEs will comply with the final rules by filing the Form M–1, and the conditions under which the Secretary may reject a filing.

Paragraphs (e) and (f) set forth the timeframes when MEWAs and ECEs must file the Form M–1. Paragraph (g) directs that the Form M–1 be filed electronically. The information provided through Form M–1 filings will then be accessible by the public and other interested parties such as State regulators.

Paragraph (h) explains the civil penalties that may result from a failure to comply with these final rules. Civil penalties for failure to file a report required by ERISA section 101(g) or § 2520.101–2 have been applicable for non-plan MEWAs under ERISA section 502(c)(5) since May 1, 2000.

These final rules also amend regulations under ERISA sections 103 and 104 to further enhance the Department's ability to enforce § 2520.101–2 by making the filing of the Form M–1 an integral part of compliance with ERISA's annual reporting requirements for plans subject to the Form M–1 filing requirements under § 2520.101–2. As a result, failure to provide information on the Form 5500 about compliance with the requirement to file a Form M–1 may result in the rejection of the Form 5500 as incomplete and the assessment of civil penalties under ERISA section 502(c)(2).

Finally, new criminal penalties were added by the Affordable Care Act under ERISA section 519 for any person who knowingly submits false statements or false representations of fact in connection with a MEWA's financial condition, the benefits it provides, or its regulatory status as a MEWA. The Affordable Care Act also amended ERISA section 501(b) to impose criminal penalties on any person who is convicted of violating the prohibition in ERISA section 519. The final rules retain the cross-reference to sections 501(b) and 519 for the purpose of implementing these new rules as these provisions relate to filing a Form M–1.

Final rules published elsewhere in today's **Federal Register** provide further guidance with respect to ex parte cease

[1] *See, e.g., Chao* v. *Graf,* 2002 WL 1611122 (D. Nev. 2002), *In re Raymond Palombo, et al.,* 2011 WL 1871438 (Bankr. C.D. CA 2011) and *Solis* v. *Palombo,* No. 1:08–CV–2017 (N.D. Ga 2009); *Chao* v. *Crouse,* 346 F.Supp.2d 975 (S.D. Ind. 2004).

[2] *See* Kofman, Mila, Bangit, Eliza, and Lucia, Kevin, *MEWAs: The Threat of Plan Insolvency and Other Challenges* (The Commonwealth Fund March 2004), and *Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40 *Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40.

and desist and summary seizure orders for MEWAs.

C. Costs and Benefits

These final regulations are designed to impose a minimal amount of burden on legally compliant MEWAs and ECEs while implementing the Secretary's authority under the Affordable Care Act to take enforcement action against fraudulent or abusive MEWAs and working to protect health benefits for businesses and their employees. This rule implements the new provisions while preserving the filing structure and provisions of the 2003 rule, which directed plan MEWAs and non-plan MEWAs to file the Form M–1.

The additional filing requirements will enhance the State and Federal governments' joint mission to take enforcement action against fraudulent and abusive MEWAs, thus limiting the losses suffered by American workers, their families, and businesses when abusive MEWAs become insolvent and fail to reimburse medical claims.

Under the final regulations, MEWAs and ECEs will incur costs to fill out and electronically file the Form M–1 and Form 5500. The Department estimates that the annualized cost may be approximately $0.1 million. As is common with regulations implementing new policies, there is considerable uncertainty arising from general data limitations and the degree to which economies of scale exist for disclosing this information. Nonetheless, the Department believes that these final regulations lower overall administrative costs from the 2003 rule because of the move to an electronic only filing system.

In accordance with Executive Orders 12866 and 13563, the Department believes that the benefits of this regulatory action justify the costs.

II. Background

The term ''multiple employer welfare arrangement'' (MEWA) is defined in section 3(40) of ERISA, 29 U.S.C. 1002(40), in pertinent part, as an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing welfare benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. For purposes of this definition, two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group. The term ''control group'' means a group of trades or businesses under common control. The determination of whether a trade or business is under ''common control'' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b) of ERISA, 29 U.S.C. 1301(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent.[3]

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, 110 Stat. 1936) (1996)) (HIPAA) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. HIPAA also added section 101(g) to ERISA, providing the Secretary with the authority to require, by regulation, annual reporting by non-plan MEWAs. The Secretary exercised the authority under the HIPAA provision by creating the Form M–1 under a 2000 interim final rule and 2003 rule.[4] Those rules generally required the administrator of both non-plan and plan MEWAs and ECEs to file the Form M–1 annually with the Secretary. The purpose of this form was to allow the Department to determine whether the requirements of part 7 were being met. Part 7 of ERISA includes statutory amendments made by HIPAA and other statutes for which MEWAs must annually report compliance.

The original MEWA reporting requirement created under HIPAA was also enacted in response to a 1992 General Accounting Office (GAO) report[5] that detailed a history of MEWA fraud and abuse.[6] To combat fraudulent MEWAs, the GAO recommended that the Department develop a mechanism to help States identify MEWAs. Although the annual MEWA reporting rules enabled the Department to develop a registry of MEWAs that filed the Form M–1, the requirement alone has not stopped the abuses discussed in the GAO report. MEWAs are frequently marketed by unlicensed entities that do not comply with State insurance reserve, contribution, and consumer protection requirements. As a result, such entities often offer health coverage at rates substantially lower than licensed insurers, making them particularly attractive to some small employers that find it difficult to obtain affordable health insurance for their employees. Unfortunately, due to insufficient funding and inadequate reserves, and in some situations, excessive administrative fees and fraud, some MEWAs have become insolvent and unable to pay medical benefit claims. This results in affected employees and their dependents becoming financially responsible for paying medical claims even after they paid premiums for their medical coverage. The unfortunate reality is that currently, the Department often does not find out about insolvent or fraudulent MEWAs until significant harm has occurred to employers and participants. Furthermore, while the Department—often working with State insurance departments—has had some success with both civil and criminal cases against MEWA operators, the monetary judgments are often uncollectible, leaving the employers and/or individual participants without coverage for claims that can be considerable.[7]

[3] This provision was added to ERISA by section 302(b) of the Multiple Employer Welfare Arrangement Act of 1983, Public Law 97–473, 96 Stat. 2611, 2612 which also amended section 514(b) of ERISA, 29 U.S.C. 1144(a). Section 514(a) of ERISA provides that State laws that relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth several exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of State regulation depending on whether the MEWA is fully insured. Sec. 302(b), Public Law 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).

[4] 65 FR 7152 (02/11/2000) and 68 FR 17494 (04/09/2003). The Form M–1 is reissued each year in December by the Department and has been modified to address changes to the statutory provisions in part 7 of ERISA.

[5] *See, Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40.

[6] For example, the 1992 GAO report indicated that between 1988 and 1991, MEWAs left at least 398,000 participants and beneficiaries with over $123 million in unpaid claims. Meanwhile more than 600 MEWAs failed to comply with State insurance laws. *See* supra note 3.

[7] *See United States* v. *Gerald Rising, Jr.,* plea agreement, 11–cr–00117–WYD–01 (U.S.D.Ct.CO) (In 2012, the owner of a MEWA that sold stop-loss insurance pled guilty for understating the claim amounts that would trigger stop-loss payments in order to charge excessive fees; the owner also commingled clients' premiums, overcharged fees, and issued fraudulent invoices, to a cost of over $3.6 million to his victims, which included over 250 individuals, businesses and government agencies.) *See also United States* v. *Edwards,* plea agreement, 1:05CR 265 (M.D.N.C. 2006) (In 2005, a MEWA operator, whom the Department showed collected over 36 million dollars in healthcare insurance premiums and failed to obtain health insurance coverage for its employer clients which resulted in thousands of uncovered employees and

Continued

The Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. 119) and the Health Care and Education Reconciliation Act of 2010 (Pub. L.111–152, 124 Stat. 1029) (these are collectively known as the ''Affordable Care Act''), have established a multipronged approach to MEWA abuses. The principal provisions include sections 6601, 6605, and 6606 of the Affordable Care Act. Section 6601 prohibits false statements and representations in connection with the marketing or sale of a MEWA. Section 6605 enables the Secretary to issue administrative cease and desist orders when MEWAs engage in certain conduct and summary seizure orders against MEWAs in a financially hazardous condition. In addition, section 6606 amended section 101(g) of ERISA. Under this last amendment, MEWAs providing benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA, 29 U.S.C. 1191b(a)(2)), which are not group health plans must now register with the Secretary prior to operating in a State. Congress left untouched the Secretary's authority to issue regulations directing such MEWAs to report, not more frequently than annually, in such form and such manner as the Secretary specifies for the purpose of determining the extent to which the requirements of part 7 of ERISA are being met. These final regulations implement the ERISA section 101(g) MEWA annual reporting provision by directing all MEWAs, including those that are plan MEWAs, to report compliance with the part 7 rules, including the Public Health Service Act (PHS Act) market reforms (PHS Act sections 2701 through 2728) incorporated by reference in ERISA section 715 by the Affordable Care Act. These final regulations also require MEWAs to register with the Department before operating in a State. The additional information provided on the Form M–1 as a result of these final rules will enhance the State and Federal governments' joint mission to prevent harm and take enforcement action against fraudulent and abusive MEWAs, thus limiting the losses suffered by American workers, their families, and businesses when abusive MEWAs become insolvent and fail to reimburse medical claims. These final rules implement the statutory requirements in a way that limits the burden on legitimate MEWAs but gives the Secretary, States, employers, and the participants and beneficiaries of the plans additional information about these entities and a stronger enforcement scheme.

On December 6, 2011, the Department published in the **Federal Register** proposed regulations (76 FR 76222) implementing the new reporting requirements for MEWAs and ECEs. The Department received six comments on the proposed rules. After consideration of the comments received, the Department is publishing these final regulations. While these final rules reflect a few changes and add some clarifications in response to questions posed by commenters, they do not significantly modify the requirements set forth in the proposed rules.

III. Overview of the Final Regulations

A. Amendment of 29 CFR 2520.101–2 Under ERISA Section 101(g).

To implement the changes made to ERISA section 101(g) by the Affordable Care Act, these final rules amend the 2003 rule. In the 2003 rule, ECEs and MEWAs were largely subject to the same filing requirements. ECEs, however, were only required to submit an annual M–1 filing for the first three years following an origination event. In keeping with this structure, these final rules extend the new filing events prescribed by the Affordable Care Act to MEWAs and ECEs alike. They also preserve the three-year limitation included in the 2003 regulation for ECEs. Based on comments on the proposed rules from the multiemployer plan community, the final rules limit the events that will constitute an origination to those defined as such in the 2003 rule.

Paragraph (a) of § 2520.101–2 in these final regulations describes the provisions of section 101(g) of ERISA that direct MEWAs that provide benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA) to register with the Secretary prior to operating in a State, and to report annually regarding compliance with part 7 of ERISA.

Paragraph (b) defines the terms used in the final regulations, with some additions and modifications from the 2003 rule. Paragraph (c) sets forth the requirement that, with certain exceptions, the administrators of MEWAs or ECEs file reports with the Department.

Paragraph (d) describes how MEWAs and ECEs will comply with the final rules by filing the Form M–1, and the conditions under which the Secretary may reject a filing.

Paragraphs (e) and (f) set forth the timeframes when MEWAs and ECEs must file the Form M–1. Paragraph (g) directs that the Form M–1 be filed electronically. In addition to minimizing errors and providing faster access to reported data, electronic filing will also be less burdensome on the filer. Once information about the MEWA or ECE is entered into the system, filers will have the option of allowing the system to copy information provided on a past filing into a new filing. This transfer of past information provides filers an easy way to update or verify information. The information provided through Form M–1 filings will then be accessible by the public and other interested parties such as State regulators.

Paragraph (h) explains the civil penalties that may result from a failure to comply with the rule. Civil penalties for failure to file a report required by ERISA section 101(g) or § 2520.101–2 have been applicable for non-plan MEWAs under ERISA section 502(c)(5) since May 1, 2000.[8]

Finally, new criminal penalties were added by the Affordable Care Act under ERISA section 519 for any person who knowingly submits false statements or false representations of fact in filing reports required under the rule.

1. Basis and Scope

These final regulations set forth rules implementing section 101(g) of ERISA, as amended by section 6606 of the Affordable Care Act, which directs MEWAs that are not group health plans to register with the Secretary prior to operating in a State. These regulations also update the existing requirement in section 101(g) of ERISA, that MEWAs, which are group health plans, and certain other entities claiming an exception, file the Form M–1 annually and upon the occurrence of specified events. While the language in section

approximately $8 million in unpaid claims), and *Solis* v. *W.I.N. Ass'n, L.L.C., et. al.,* slip op. 4:11-cv-00616 (S.D. Tex. 2011) (The Department investigated a MEWA which failed to make payments on health care claims, charged excessive fees, engaged in self-dealing, and failed to disclose fees to the client employers in the plan. The Department obtained a Consent Judgment and Order against the MEWA operators for leaving hundreds of participants without coverage and permanently enjoining them from acting as fiduciaries in the future. Also, the court authorized the Secretary to bring a collection action for the plan losses against one of the MEWA operators relative to his ability to restore those plan losses.) For additional information about MEWAs, see *http://www.dol.gov/ebsa/newsroom/fsMEWAenforcement.html.*

[8] Under these final regulations, similar civil penalties under ERISA section 502(c)(2) may apply to plan MEWAs and ECEs required to file the Form M–1 that fail to answer questions on the Form 5500 about compliance with the requirement to file a Form M–1. *See* section B of this preamble for the changes that are being made to §§ 2520.103–1, 104–20, and 104–41 to further enhance the Department's ability to enforce these provisions with regard to MEWAs and ECEs that are group health plans.

101(g) of ERISA only applies to non-plan MEWAs, these final rules preserve the structure promulgated as part of the 2003 regulation, which required both plan and non-plan MEWAs to file the Form M–1, based on authority found in sections 505 and 734 of ERISA. Section 505 of ERISA states that the Secretary may prescribe such regulations as she finds necessary or appropriate to carry out the provisions of Title I of ERISA. Section 734 of ERISA allows the Secretary to promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA.

One commenter questioned the Department's authority to require ECEs to file a Form M–1 prior to operating in a State. As explained in the preamble to the 2003 rule, the Department has set forth procedures for administrative hearings to obtain a determination by the Secretary that a collectively bargained plan is exempted from ERISA's definition of a MEWA. 29 CFR 2510.3–40. An entity that has a determination from an Administrative Law Judge (ALJ) that it is such a collectively-bargained plan is not required to file a Form M–1 while the opinion remains in effect unless the circumstances underlying the determination change. Entities may, however, claim the exemption on their own accord and sometimes do so incorrectly, including as part of an insurance fraud scheme using sham unions and collective bargaining agreements to market health coverage to small employers. The Secretary remains concerned about MEWA operators who avoid State insurance regulation by making false assertions that the arrangement is pursuant to a collective bargaining agreement. The requirement that ECEs file the Form M–1 for only three years after an origination event continues to provide an important enforcement tool while imposing little burden on bona fide collectively bargained plans. Bona fide collectively bargained plans also benefit from the early identification of MEWA operators using sham unions and collective bargaining agreements. Consequently, based on the Department's authority under ERISA sections 505 and 734, the final rules preserve the three-year limitation included in the 2003 regulation for ECEs.

2. Definitions

a. Operating. Paragraph (b)(8) of § 2520.101–2 of the proposed and these final rules adds a definition of ''operating'' and defines it as any activity including but not limited to marketing, soliciting, providing, or offering to provide benefits consisting of medical care. This definition, which includes marketing and administrative activities, governs when Form M–1 filings must be made. Some commenters raised concerns that the definition in the proposed rules could be interpreted broadly to include participants receiving medical care in a State in which the MEWA or ECE has not been providing medical benefits and for which it is not otherwise required to make any filings. These commenters noted that MEWAs or ECEs would be unable to comply with the requirement to file the Form M–1 30 days before operating in an additional State because they would not know when a participant planned, for instance, to move or travel to a new State. The Department never intended for the definition of operating to apply to the receipt of medical care without any action by, or on behalf of, the MEWA or ECE to market, solicit, provide, or offer to provide medical benefits to a participating employer in that State.

Commenters also noted that, in general, they would not be aware in advance if an employer or union, on its own accord, distributes information about medical care in a State in which the MEWA or ECE has not been operating and is not registered. ECEs, in particular, may not be aware of a contract awarded for work in a new State to a company that is part of a collective bargaining agreement. The Department agrees that there are circumstances in which it would be difficult, if not impossible, for a MEWA or ECE to file the Form M–1 30 days before operating in an additional State. Consequently, while the Department has not revised the definition of operating, as discussed later in this preamble, provisions in paragraph (e) in these final rules on when a MEWA or ECE must file when it begins operating in an additional State have been revised to address this concern.

b. Origination and Special Filing Events. The 2003 rule used the term ''origination'' to determine if additional filings were necessary for both MEWAs and ECEs. As in the proposed rules, the Department only uses the term ''origination'' when it refers to events that trigger an additional filing by ECEs in the final rules. The term ''registration'' also continues to be used to refer to filings by MEWAs.

The definition of origination, however, has been modified in the final rules. This change responds to a commenter who found the provisions in the proposed rules relating to the application of the three-year limitation to ECEs that begin operating in additional States to be confusing. These final rules have been adjusted to clarify that an ECE is not required to file a Form M–1 solely because it begins operating in an additional State or experiences a material change after the three-year period following any of the three origination events: (i) The ECE first begins operating with regard to the employees of two or more employers (including one or more self-employed individuals); (ii) the ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated at least three years prior to the merger); or (iii) the number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger).

In paragraph (b)(9)(ii) and (v) of § 2520.101–2 of the proposed rules, the definition of origination also included an ECE that begins operating in an additional State or experiences a material change. To clarify that the three-year rule does not restart or extend when those two events occur, they were moved to a new paragraph (b)(11) in the final rules on special filing events. Additionally, the reference to the three-year period during which filings are required was removed from the definition of origination. In the final rules, the paragraph (b)(9) origination events and the corresponding filing rules in paragraph (c)(1)(ii) now clarify that only the events in paragraph (b)(9) restart or extend the three-year period for ECEs.

c. Reporting. As in the proposed rules, the final rules add a definition of ''reporting.'' ''Reporting'' or ''to report'' means to file the Form M–1 as required pursuant to section 101(g) of ERISA; § 2520.101–2; or the instructions to the Form M–1. The term ''reporting'' is used in order to correspond to the terminology of § 2560.502c–5, which uses the generic term ''report'' to describe the Form M–1 filing process, including the annual report as well as registration, origination, and all other required M–1 filings.

d. State. The final rules also, like the proposed rules, add a definition of ''State'' and define the term by reference to § 2590.701–2. This definition was added because MEWAs must register, and ECEs must make an origination filing, prior to operating in a State.

3. Persons Required to Report

Paragraph (c) of § 2520.101–2 of the final rules set forth the persons required to report. As under the 2003 rule and the proposed rules, the final rules direct the administrator of a MEWA that provides benefits consisting of medical care, whether or not the MEWA is a group health plan, to file the Form M–1. It also requires filing by the administrator of an ECE that offers or provides coverage consisting of medical care. Several commenters suggested changes to this section. One commenter sought to have third party administrators carved out of the definition of administrator. Another sought to have affiliated service groups exempted from the filing requirements. The Department considered these comments but declines to modify these longstanding provisions promulgated as part of the 2003 rule. However, as noted above, to clarify the timing requirements for filings required of ECEs, this paragraph references the requirement that such filings be made only during the three years after the ECE is originated.

4. Information To Be Reported

Paragraph (d) of the final rules is unchanged from the proposed rules. It clarifies that the reporting requirements of § 2520.101–2 will only be satisfied by filing a completed copy of the Form M–1, including any additional statements required pursuant to the Form M–1 instructions. One commenter wanted even more detailed financial information collected on the Form M–1. As noted earlier, after consideration of the comments made, the Department has reviewed the Form M–1 but made only minor changes to the content of the Form M–1 that was proposed to correspond to these final rules. A notice announcing the availability of the finalized revisions to the Form M–1 and its instructions are published elsewhere in this edition of the **Federal Register**.

5. Reporting Requirements and Timing

The final rules retain from the 2003 rule and the proposed rules that both MEWAs and ECEs must file the Form M–1 annually, with ECEs only having to file annually for the first three years following an origination. However, to clarify the application of the new registration requirements, the annual filing requirements were moved from paragraph (e) to paragraph (f) (and paragraphs (f) and (g) were redesignated paragraphs (g) and (h)).

As mentioned previously, MEWAs and ECEs are also subject to additional (non-annual) filings in certain circumstances. Several non-annual filing events were included in the 2003 regulation, but, as previously explained, these filings were relabeled and expanded in the proposed rules and these final rules to implement changes to the statutory language. The 2003 regulation and the proposed rules generally required an additional filing when a MEWA or ECE: (1) First began offering or providing coverage for medical care to employees of two or more employers; (2) began offering or providing coverage for medical care to employees of two or more employers after a merger with another MEWA or ECE; or (3) increased the number of employees receiving medical care under the MEWA or ECE by at least 50 percent over the number of employees on the last day of the previous calendar year. In the proposed rules, the first event was modified to conform to the statutory language under ERISA section 101(g) directing MEWAs to register with the Secretary by filing a Form M–1 prior to operating in any State. Additionally, the proposed rules directed that a filing be made in the event a MEWA (and in some cases an ECE) expands its operations into additional States or experiences a material change as defined in the Form M–1 instructions. These filing events are preserved in these final rules.

Several commenters sought to limit filings due to a material change. This filing event was added to direct an entity to update its Form M–1 filing in the event that it experienced changes in certain financial or custodial information. The Department intends to follow the same basic structure for these filings as it has indicated it will for filings related to operating in a State. So, for example, if a MEWA or ECE takes action to add or remove an individual who is a marketer or promoter, the MEWA or ECE would have experienced a material change and would need to report. However, if the MEWA or ECE employs a third party (and appropriately identifies that entity in its filings) and the third party takes action to add or remove an individual who is a marketer or promoter, the MEWA or ECE will not have experienced a material change and no additional filing will be required. In the event an entity experiences a material change, the online filing system will allow them to log on, import data from the most recently completed filing, and make the necessary changes. The regulatory provision is retained as proposed, but in response to these comments, the Department will continue to ensure the electronic filing system minimizes the additional burden on entities that experience a material change. Consistent with the 2003 rule and the proposed rules, these final rules direct MEWAs to submit filings for the duration of their existence and ECEs to file only during the three-year period following an origination. As noted above, ECEs that begin operating in a new State or experience a material change during their three-year filing period report those events. ECEs that are not required to file because they are outside their three-year period do not need to report those events.

The final rules also apply new timing standards on MEWAs and ECEs for these additional filings. Under the 2003 regulation, MEWAs and ECEs filed the Form M–1 within 90 days of the occurrence of certain events. The proposed and these final rules direct entities to file 30 days prior to or within 30 days of the event, depending on the type of event which prompts the filing. The timing requirements in paragraph (e) implement section 6606 of the Affordable Care Act, which provides that the filing must happen ''prior to operating in a State'' and will also facilitate the Department's timely receipt of information related to the other filing events described above. One commenter suggested that ECEs not be required to file 30 days prior to operating in an additional State because it might be difficult for the entity to determine when the event occurs. The Department considered this comment and, as previously stated, has revised the provision to address this concern. In these final rules, a MEWA or ECE will need to make a registration or special filing within 30 days of knowingly operating in any additional State or States. The Department does, however, expect MEWAs and ECEs to periodically monitor the activities of participating employers so that they become aware of any unilateral actions by participating employers that have caused them to begin operating in an additional State. Knowledge by a MEWA or ECE includes knowledge by an employee or agent of the MEWA or ECE.

The provision included in the proposed rules to discourage ''blanket filings,'' (i.e., registration, origination, or special filings that cover multiple States, unless the filer expects to begin operating in all the named States in the near future), was retained in these final rules. Blanket filings that list States where the filer has no immediate intent to operate could frustrate the law's goal of gathering and maintaining timely and accurate information on MEWAs. Under this provision, a filing is considered lapsed with respect to a State if benefits

consisting of medical care are not offered or provided in the State during the calendar year immediately following the filing. A new filing would be required if the filer intends to resume operating in that State.

To minimize the burden of compliance, the final rules continue to permit MEWAs and ECEs to make a single filing to satisfy multiple filing events so long as the filing is timely for each event.

As in the 2003 rule and the proposed rules, filing extensions are available. Any filing deadline that is a Saturday, Sunday, or federal holiday is automatically extended to the next business day. The proposed rules provided a more substantial extension for annual filings if MEWAs and ECEs requested such an extension following the procedure outlined in the instructions to the Form M–1. A question was raised regarding whether extensions were limited to annual filings. The Department considered this option and believes that any filing should be eligible for an extension so long as the request is made in a timely manner and in accordance with the Form M–1 instructions. A modification to this effect was made to the operative language in paragraph (e) of § 2520.101–2 of the final rules.

6. Electronic Filing

As in the proposed rules, paragraph (g) of § 2520.101–2 of the final rules eliminates the option to file a paper copy of the completed Form M–1. As is now the case for Form 5500 Annual Return/Report filings required under Title I of ERISA and consistent with the goals of E-government, as recognized by the Government Paperwork Elimination Act[9] and the E-Government Act of 2002,[10] these final rules require that the Form M–1 be filed electronically. Electronic filing of benefit plan information, among other program strategies, facilitates EBSA's achievement of its Strategic Goal to ''assure the security of the retirement, health and other workplace related benefits of American workers and their families.'' EBSA's strategic goal directly supports the Secretary of Labor's Strategic Goal to ''secure health benefits.'' [11] A cornerstone of the Department's enforcement program is the collection, analysis, and disclosure of benefit plan information. Electronic filing minimizes errors and provides faster access to reported data, assisting EBSA in its enforcement, oversight, and disclosure roles and ultimately enhancing the security of plan benefits. Electronic filing of the Form M–1 also reduces the paperwork burden and costs related to printing and mailing forms and, with the use of secure account access, allows updating of previously reported information to facilitate simplified future reporting. Finally, consistent with current practice, the information will be available for reference by participants, beneficiaries, participating employers, and other interested parties such as State regulators. A notice announcing the availability of the updated Form M–1 filing system will be published elsewhere in this edition of the **Federal Register**.

7. Penalties

a. Civil penalties and procedures. The final rules retain the references to section 502(c)(5) of ERISA, 29 U.S.C. 1132(c)(5) and § 2560.502c–5 regarding civil penalties and procedures.

b. Criminal penalties and procedures. Affordable Care Act section 6601 added ERISA section 519, which prohibits a person from making false statements or representations of fact in connection with a MEWA's financial condition, the benefits it provides, or its regulatory status as a MEWA. The Affordable Care Act also amended ERISA section 501(b) to impose criminal penalties on any person who is convicted of violating the prohibition in ERISA section 519. The final rules retain the cross-reference to sections 501(b) and 519 of ERISA, 29 U.S.C. 1131 and 1149, for the purpose of implementing these new rules as they relate to filing a Form M–1 prior to operating in a State or other registration, origination, and special filings.

c. Cease and desist and summary seizure and procedures. Section 6605 of the Affordable Care Act added section 521 to ERISA, which authorizes the Secretary to issue cease and desist orders, without prior notice or a hearing, when it appears to the Secretary that the alleged conduct of a MEWA is ''fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.'' This section also allows the Secretary to issue an order to seize the assets of a MEWA that the Secretary determines to be in a financially hazardous condition. The regulation providing guidance on the cease and desist orders and summary seizure rules published elsewhere in this **Federal Register** also includes regulatory guidance on the procedural rules for this process. A cease and desist order containing a prohibition against transacting business with any MEWA or plan would prevent the MEWA or a person from avoiding the cease and desist order by shutting the MEWA down and re-establishing it in a new location or under a new identity.

As such, the final rules retain the cross-reference to section 521 of ERISA and § 2560.521 regarding the Secretary's authority to issue cease and desist and summary seizure orders.

B. Amendment to Regulations Under ERISA Sections 103 and 104

Pursuant to authority in ERISA section 104(a)(3) to establish reporting exemptions and simplified reporting for welfare benefit plans, this rulemaking also makes filing the Form M–1 an integral part of compliance with ERISA's simplified reporting requirements by requiring all plans subject to the Form M–1 filing requirements under § 2520.101–2 to file a Form 5500 Annual Return/Report, and include specific Form M–1 compliance information. The revisions to the Form 5500 and instructions reflecting these final rules are being published simultaneously as a Notice of Adoption of Revisions to the Form 5500 Annual Return/Report in today's **Federal Register**. That document includes a discussion of the changes to the Form 5500 and instructions as well as the Department's findings required under sections 104(a)(3) and 110 of ERISA with regard to the use of the revised Form 5500 as a simplified report, alternative method of compliance, and/or limited exemption pursuant to § 2520.103–1(b).

We requested but received no comments on these changes to the annual reporting requirements; therefore, these final rules retain the changes proposed to further enhance the Department's ability to enforce the Form M–1 filing requirements under § 2520.101–2, except for technical changes and a clarification that all plans required to file the Form M–1 (plan MEWAs and ECEs) are required to file a Form 5500 and to answer the Form M–1 compliance questions on the Form 5500.[12]

[9] Title XVII, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998).

[10] Public Law 107–347, 116 Stat. 2899 (Dec. 17, 2002).

[11] For further information on the Department of Labor's Strategic Plan and EBSA's relationship to it, see *http://www.dol.gov/_sec/stratplan/.*

[12] Unlike plan MEWAs that are under a permanent requirement to file the Form M–1, 29 CFR 2520.101–2 requires an ECE to file the Form M–1 only during the three years following each origination event (an ECE may experience more than one origination event). Therefore, the final Form 5500 rules for plans required to file the Form M–1 apply to ECEs only during the periods in which ECEs are required to file the Form M–1.

The primary change to § 2520.103–1 being adopted in this rule is the addition of a new paragraph (f) regarding the content of the annual report. Existing paragraph (f) of § 2520.103–1 is redesignated paragraph (g), but is otherwise unchanged. New § 2520.103–1(f) applies to all plans that are subject to the Form M–1 filing requirements of § 2520.101–2 during the plan year. This change provides that all such plans must demonstrate compliance with § 2520.101–2 (filing the Form M–1) in order to satisfy the annual reporting requirements of § 2520.103–1. Pursuant to ERISA section 502(c)(2), 29 U.S.C. 1132(c)(2), a plan administrator who fails to file a Form 5500 Annual Return/Report with a proof of compliance with § 2520.101–2 may be subject to a civil penalty of up to $1,100 a day (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) for each day a plan administrator fails or refuses to file a complete report. Although ERISA sections 505 and 734 give the Secretary the authority to require MEWAs and ECEs that are employee benefit plans to comply with the requirements of § 2520.101–2, unlike MEWAs that are not employee benefit plans, there is no specific ERISA civil penalty applicable to plan MEWAs and ECEs for a failure to comply with those requirements. These changes to the Form 5500 annual reporting requirements for plan MEWAs and ECEs will enhance the Department's ability to enforce the Form M–1 filing requirements.

The final rules include conforming changes adding references to the new § 2520.103–1(f) and other conforming changes in §§ 2520.103–1(a), (b), (c) and § 2520.104–41. A corresponding change is also made to § 2520.104–20 to expressly provide that the limited filing exemption under § 2520.104–20 is no longer available to plan MEWAs and ECEs with fewer than 100 participants required to file the Form M–1 (small plans). In addition, a new paragraph (E) has been added to § 2520.103–1(c)(2)(ii) to provide that small plans subject to the Form M–1 filing requirements are not eligible to file the Form 5500–SF (Short Form 5500 Annual Return/Report of Small Employee Benefit Plan) under § 2520.103–1(c)(2)(ii) and § 2520.104–41.[13]

Although small plans subject to the Form M–1 filing requirements are not eligible to file the Form 5500–SF, these plans are still eligible for the simplified Form 5500 annual reporting for small welfare plans, and these plans that meet all of the requirements for the relief under § 2520.104–44 are exempt from certain financial reporting and audit requirements. Small plan MEWAs and ECEs that qualify for the relief provided by 29 CFR 2520.104–44 would only need to file the Form 5500 Annual Return/Report and, if applicable, Schedule A (Insurance Information) and Schedule G, Part III (nonexempt transactions).[14] Such plans are no longer eligible to use the Form 5500–SF because that form does not include Schedule A insurance information. The Department believes that plans subject to these final rules that claim to provide insured benefits should be required to complete the Schedule A so that enforcement officials and the public have information about the insurance policy and insurance company through which the plan is providing insurance coverage. Thus, these changes give the Secretary an important enforcement tool while imposing minimal burden on small plan MEWAs and ECEs.

IV. Regulatory Impact Analysis

A. Executive Order 12866 and 13563

Under Executive Order 12866, a ''significant'' regulatory action is subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting 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) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is not economically significant within the meaning of section 3(f)(1) of the Executive Order but is significant under section 3(f)(4) of the Executive Order because it raises novel legal or policy issues arising from the President's priorities. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Department estimates that the total cost of this rule would be approximately $137,400 in the first year, or an average of approximately $284 for each of the 484 entities expected to file the Form M–1. These costs are all associated with the information collection request contained in these rules and, therefore, are discussed in the Paperwork Reduction Act Section, below.

1. Summary and Need for Regulatory Action

As discussed earlier in this preamble, section 6606 of the Affordable Care Act amended section 101(g) of ERISA to require the Secretary of Labor to promulgate regulations requiring MEWAs providing medical care benefits (within the meaning of section 733(a)(2) of ERISA) that are not ERISA-covered group health plans (non-plan MEWAs) to register with the Secretary before operating in a State.

The original MEWA reporting requirement in ERISA section 101(g) was enacted by Congress as part of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 in response to a 1992 General Accounting Office (GAO) recommendation.[15] The GAO recommended that the Department develop a mechanism to help States identify fraudulent and abusive MEWAs. The HIPAA provision led to the Department creating the Form M–1 under a 2000 interim final rule and 2003 final rule.[16]

ERISA section 101(g), as amended by the Affordable Care Act, directs the Department of Labor (the Department) to promulgate rules requiring MEWAs that are not group health plans (non-plan MEWAs) to register with the Secretary of Labor (the Secretary) prior to operating in a State. ERISA sections 505 and 734 provide the Secretary with the authority to require plan MEWAs and

[13] In addition, an unrelated technical correction to 29 CFR 2520.104–41 is being included in this rulemaking to add an express reference to the Form 5500–SF.

[14] Neither these final regulations nor the companion revisions to the Form 5500 change the eligibility requirements for the limited exemption under 29 CFR 2520.104–44. The Department expects that many plan MEWAs and ECEs will not satisfy the unfunded and insured eligibility requirements in the limited exemption and will continue to be ineligible for the reporting relief under 29 CFR 2520.104–44.

[15] *See, Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40.

[16] 65 FR 715 (02/11/2000) and 68 FR 17494 (04/09/2003). The Form M–1 has been updated and is reissued each year in December by the Department and modified periodically to address changes to the statutory provisions in part 7 of ERISA.

ECEs to comply with the Form M–1 reporting requirements,[17] but because ERISA section 101(g) only applies to non-plan MEWAs, only non-plan MEWAs are subject to civil penalties under ERISA section 502(c)(5) for failure to comply with the Form M–1 requirements.[18] In order to enhance the Department's ability to enforce the Form M–1 requirements and ensure that MEWAs are subject to the same rules under the law, this final rule will require all plan MEWAs to prove compliance with the Form M–1 filing requirements in order to satisfy the ERISA annual reporting requirements.[19] In amending the Department's MEWA reporting regulation to require MEWAs to register with the Secretary before operating in a State, these final rules direct Form M–1 filers to provide additional information regarding the MEWA or ECE and apply new timing standards for the filings that are made when a MEWA's or ECE's status changes. These amendments will aid the Department in its oversight of MEWAs consistent with its expanded authority provided by the Affordable Care Act [20] and allow the Department to provide critical information to State insurance departments that coordinate their investigations and enforcement actions against fraudulent and abusive MEWAs with the Department.

Over the last several years, the Department has observed a downward trend in the number of MEWAs that file the Form M–1, raising concerns that some existing MEWAs are not filing the form. Under the 2003 regulation, the Department has the ability to assess penalties against MEWAs that fail to file the Form M–1 only in limited circumstances and if a determination regarding plan status was made by the Secretary. To address this issue and encourage compliance with the Form M–1 filing requirement, the Department also is amending, as part of this regulatory action, the Form 5500 annual reporting requirements. The amendment will require all plans subject to the Form M–1 filing requirements, regardless of plan size or type of funding,[21] to file the Form 5500 Annual Return/Report and demonstrate on the form compliance with Form M–1 filing requirements. Failure to do so may result in an assessment of penalties under ERISA section 502(c)(2).[22]

These amendments to the Department's MEWA reporting standards would provide a cost effective means to implement the expanded MEWA reporting as enacted in the Affordable Care Act. As stated above, the Department estimates that the average cost for each entity that the Department expects to file the revised Form M–1 would average approximately $284 during the first year and $181 during each subsequent year.

2. Benefits of Rule

As discussed earlier in this preamble, section 6606 of the Affordable Care Act amended section 101(g) of ERISA directing the Secretary to promulgate regulations requiring non-plan MEWAs providing medical care benefits (within the meaning of section 733(a)(2) of ERISA) to register with the Secretary before operating in a State. By implementing this statutory amendment, the Department would receive prior notice of a MEWA's intention to commence operations in a State. Such notification would help the Department and State insurance commissioners to ensure that MEWAs are being lawfully operated and that sufficient insurance has been purchased or adequate reserves established to pay benefit claims before the MEWAs begin operating [23] in a State. These final rules would improve MEWA compliance and deter fraudulent and abusive MEWA practices, thereby protecting and securing the benefits of participants and beneficiaries by ensuring that MEWA assets are preserved and benefits timely paid. These potential benefits have not been quantified, but the Department expects that they will justify the costs.

3. Costs of Rule

The costs of the rule are associated with the amendments to the Form M–1 and Form 5500 reporting requirements and are therefore discussed in the Paperwork Reduction Act section, below.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the proposed regulation, for OMB's review.

Although no additional public comments were received that specifically addressed the paperwork burden analysis of the information collections at the proposed rules stage, the comments that were submitted and described earlier in this preamble, contained information relevant to the costs and administrative burdens attendant to the proposals. The Department took into account such public comments in connection with making changes to the final rules and in developing the revised paperwork burden analysis summarized below.

In connection with publication of these final rules, the Department submitted a revision to the ICR under OMB Control Number 1210–0116. OMB approved the revised ICR, which is scheduled to expire on February 29, 2016. A copy of the revised ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov*.

PRA ADDRESSEE: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202)

[17] In the preamble to the 2000 interim final rule, the Department explained ''[a]n important reason for requiring these groups to file is that the administrator of a MEWA may incorrectly determine that it is a group health plan or that it is established or maintained pursuant to a collective bargaining agreement. A reporting requirement limited only to MEWAs that are not group health plans may not result in reporting by many such MEWAs, thus greatly reducing the value of the data collected.'' See 65 FR 7152, 7153 (Feb. 11, 2000).

[18] Pursuant to ERISA section 502(c)(5), a civil penalty of up to $1,100 (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) a day may be assessed for each day a non-plan MEWA fails to file a complete Form M–1.

[19] Pursuant to ERISA section 502(c)(2), a plan administrator who fails to file a Form 5500 Annual Return/Report with a proof of compliance with the M–1 filing requirements may be subject to a civil penalty of up to $1,100 a day (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) for each day a plan administrator fails or refuses to file a complete report.

[20] As part of the Affordable Care Act, Congress also enacted ERISA section 521, which authorized the Secretary to issue cease and desist orders, without prior notice or a hearing, when it appears to the Secretary that a MEWA's alleged conduct is fraudulent, creates an immediate danger to the public safety or welfare, or causes or can reasonably be expected to cause significant, imminent, and irreparable public injury. Section 521 also authorizes the Secretary to issue a summary order to seize the assets of a MEWA that the Secretary determines to be in financially hazardous condition. The Department also is finalizing rules for these provisions, which are published elsewhere in today's **Federal Register**.

[21] The final rules expressly provide that the limited exemption for certain unfunded and insured small welfare plans under § 2520.104–20 is not available for any plans subject to the Form M–1 filing requirements. In addition, these plans also are not eligible to use the Form 5500–SF.

[22] A plan administrator who fails to file a Form 5500 with a proof of Form M–1 compliance could be subject to a civil penalty of up to $1,100 a day for each day the plan administrator fails or refuses to file a complete report.

[23] Section 2520.101–2(b)(8) of the proposed rule provides that the term ''operating'' means any activity including but not limited to marketing, soliciting, providing, or offering to provide medical care benefits.

219–4745. These are not toll-free numbers.

Between 2006 and 2010, an average of 484 entities (MEWAs and ECEs) filed the Form M–1 with the Department (a high of 533 in 2006 and a low of 436 in 2010). Of the total filings, on average, 217 were submitted via mail and 267 were submitted electronically through the Form M–1 electronic filing system provided by the Department via the Internet. The fraction filing electronic returns has been increasing and reached nearly 63 percent in 2010. This rule will require all filings to be submitted electronically.

As discussed above and pursuant to section 6606 of the Affordable Care Act, these rules amend the information required to be disclosed on the Form M–1 by adding new data elements. Therefore, the Department assumes that all administrators of MEWAs and ECEs that file the Form M–1 in-house (an estimated 10 percent of filers) would spend two hours familiarizing themselves with the changes to the form that would be made by the final regulations. This would result in a total hour burden of 97 hours (48 entities * 2 hours). The Department estimates that Part I of the Form (the identifying information) would require five minutes to complete. The time required to complete Part II would vary based on the number of States in which the entity provides coverage, and the Department estimates that this would require 60 minutes for single-State filers and 120 minutes for multi-State filers. The Department expects the time required to complete Part III would be 15 minutes for fully-insured filers and 30 minutes for not fully-insured filers. Table 1 below summarizes the estimates of time required to complete each part of the form. Based on the foregoing, the Department estimates that the total hour burden for entities to file the Form M–1 using in-house resources would be 188 hours in the first year with an equivalent cost of $17,900 assuming all work will be performed by an employee benefits professional at $94.91 per hour.[24] The cost to submit electronic filings would be negligible.

The Department estimates that the annual hour burden for Form M–1 filings prepared in-house in subsequent years would be approximately 100 hours as summarized in Table 2.[25] The Department's estimate is based on the assumption that approximately 44 new entities[26] will file the Form M–1 each year, and thus, approximately four new entities will prepare the Form M–1 in-house. The Department estimates that it would take two hours for these administrators, resulting in an hour burden of eight hours. The Department estimates that entities preparing the form in-house would spend four hours completing Part I, 68 hours completing Part II, and 15 hours completing Part III. The equivalent cost of this annual hour burden is estimated to be $8,600, assuming a $94.91 hourly labor rate for an employee benefits professional.

TABLE 1—TIME TO FILL OUT FORM

[Minutes]

	Fully-insured		Not fully-insured	
	One State	Multi States	One State	Multi States
New Filing	120	120	120	120
Part I	5	5	5	5
Part II	60	120	60	120
Part III	15	15	30	30

TABLE 2—HOUR BURDEN TO PREPARE FORM M–1, IN-HOUSE PREPARATION

	Fully-insured		Not fully-insured		Total
	One State	Multi States	One State	Multi States	
# of MEWAs and ECEs	16	18	9	5	48
Review: Year 1	32	36	18	11	97
New Filing: Subsequent Years	3	3	2	1	9
Part I	1	2	1	0	4
Part II	16	36	9	11	72
Part III	4	5	4	3	16
Total Time: Year 1	54	78	31	25	188
Total Time: Subsequent Years	24	45	15	15	100

1. *Cost Burden*

The Department assumes that 90 percent of the 484 entities (435 entities) that will file the Form M–1 will use third-party service providers to complete and submit the Form M–1.[27] Because the Department is adding additional data elements to the form, the Department assumes that in the year of implementation, all service providers would spend additional time familiarizing themselves with the changes. The Department estimates that entities that use third party service providers would incur the cost of one hour for service providers to review the new rule as service providers likely will provide this service for multiple entities and therefore spread this burden across multiple entities. This results in a one-time cost burden of $41,300 (435 entities * 1 hour * $94.91).

The total estimated cost burden for preparing the form is arrived at by

[24] The Department estimates 2012 hourly labor rates include wages, other benefits, and overhead based on data from the National Occupational Employment Survey (June 2011, Bureau of Labor Statistics) and the Employment Cost Index (September 2011, Bureau of Labor Statistics); the 2010 estimated labor rates are then inflated to 2012 labor rates.

[25] These are rounded values. The totals may differ slightly as a result.

[26] An average of 9 percent of entities originate each year according to Form M–1 data.

[27] This assumption is made in connection with EBSA's principal reporting form, the Form 5500, and was validated through a filer survey.

multiplying the number of filers (found in Table 3) by the amount of time required to prepare the documents (Table 1) and multiplying this result by the hourly cost of an employee benefits professional ($94.91 dollars an hour). Based on the foregoing, the total cost burden for entities that use purchased third-party resources to file the Form M–1 is $119,500 in the first year and $78,200 in later years. Table 3 summarizes the estimates of the cost burden.

TABLE 3—COST BURDEN TO PREPARE FORM M–1, THIRD-PARTY PREPARATION

	Fully-insured		Not fully-insured		Total
	One State	Multi States	One State	Multi States	
# of MEWAs and ECEs	145	163	79	49	435
Review: Year 1	$13,700	$15,400	$7,500	$4,700	$41,300
New Filing: Subsequent Years	$0	$0	$0	$0	$0
Part I	$1,100	$1,300	$600	$400	$3,400
Part II	$13,700	$30,900	$7,500	$9,400	$61,400
Part III	$3,400	$3,900	$3,700	$2,300	$13,400
Total: Year 1	$32,000	$51,400	$19,300	$16,800	$119,500
Total: Subsequent Years	$18,300	$36,000	$11,800	$12,100	$78,200

Note: The displayed numbers are rounded to the nearest hundred and therefore may not add up to the totals.

These regulations direct a plan that is subject to Form M–1 filing requirements to include proof of Form M–1 compliance as part of the Form 5500. Accordingly, the Department is adding a new Part III to the Form 5500, that asks for information regarding whether the employee welfare benefit plan is subject to the Form M–1 filing requirements, and if so, whether the plan is currently in compliance with the Form M–1 filing requirements under § 2520.101–2. Plan administrators that indicate the plan is subject to the Form M–1 filing requirements also would be required to enter the Receipt Confirmation Code for the Form M–1 annual report or the most recent Form M–1 required to be filed with the Department. Failure to answer the Form M–1 compliance questions will result in rejection of the Form 5500 Annual Return/Report as incomplete and civil penalties may be assessed pursuant to ERISA section 502(c)(2). The Department believes that the burden associated with this revision would be de minimis because plan administrators would know whether the plan is subject to and in compliance with the Form M–1 filing requirements, and they would have the Receipt Confirmation Code for the Form M–1 filing readily available.

The regulations also amend § 2520.104–20 to expressly provide that the exemption from filing the Form 5500 is not available for small plans required to file the Form M–1. Following the methodology used to calculate the burden in the Form 5500 regulations, the Department estimates that for small plans that meet the requirements of § 2520.104–44, filing a Form 5500 and completing Schedule A and Part III of Schedule G would cause them to incur an annual cost of $450 to engage a third-party service provider to prepare the form and schedules for submission. The Department does not have sufficient data to determine the number of small plan MEWAs and ECEs that would be required to file the Form 5500 under the final rules, but believes that the number of such plans would be small, because 90 percent of the entities that file Form M–1 with the Department cover more than 100 participants.

2. Cost to the Government

The Department estimates that the cost to the Federal government to process Form M–1s is approximately $7,200. This includes the cost to process online submissions and maintain the processing system, and was estimated by the offices within EBSA that are responsible for overseeing these activities.

TABLE 4—COST OF FEDERAL GOVERNMENT OF FORM M–1

Processing of M1 Forms	
Online	$2,200
Maintenance of System	5,000
Total	7,200

These paperwork burden estimates are summarized as follows:

Type of Review: Revised collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: MEWA Form M–1

OMB Control Number: 1210–0116

Affected Public: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 484 (first year); 484 (three-year average).

Estimated Number of Responses: 484 (first year); 484 (three-year average).

Frequency of Response: Annually.

Estimated Annual Burden Hours: 188 (first year); 130 (three-year average).

Estimated Annual Burden Cost: $119,500 (first year); $92,000 (three-year average).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) and are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions. In accordance with the RFA, the Department prepared an initial regulatory flexibility analysis at the proposed rule stage and requested comments on the analysis. No comments were received. Below is the Department's final regulatory flexibility analysis and its certification that these final regulations do not have a significant economic impact on a substantial number of small entities.

The Department does not have data regarding the total number of MEWAs and ECEs that currently exist. The best

information the Department has to estimate the number of MEWAs and ECEs is based on filings of the Form M–1, which MEWAs and certain collectively bargained arrangements have filed annually with the Department. Just over 436 entities filed the Form M–1 with the Department in 2010, the latest year for which data is available.

The Small Business Administration uses a size standard of less than $7 million in average annual receipts as the cut off for small business in the finance and insurance sector.[28] While the Department does not collect revenue information on the Form M–1, it does collect data regarding the number of participants covered by MEWAs and ECEs that file Form M–1 and can use participant data and average premium data to determine the number of MEWAs and ECEs that are small entities, because their revenues do not exceed the $7 million threshold. For 2009, the average single coverage annual premium was $4,717 and the average annual family coverage premium was $12,696.[29] Combining these premium estimates with estimates of the ratio of policies to the covered population from the Current Population Survey at employers with less than 500 workers (0.309 for single coverage and 0.217 for family coverage), the Department estimates that 62 percent of entities filing Form M–1 (258 entities) are small entities.

While this number is a relatively large fraction of all entities, it is about 7 percent when expressed as a fraction of all participants covered by MEWAs and ECEs. In addition, the Department notes that the reporting burden that would be imposed on all MEWAs and ECEs by the rule is estimated as an average cost of $284 for each entity filing Form M–1. For all but the smallest MEWAs or ECEs (less than 15 participants), this represents less than one-half of one percent of revenues.

The regulations also amend § 2520.104–20 to expressly provide that the limited exemption from filing the Form 5500 for certain unfunded and insured small welfare plans is not available for plans required to file the Form M–1. As discussed in the PRA section above, the Department estimates that these small plan MEWAs and ECEs would incur an annual cost of $450 to engage a third-party service provider to prepare the form and schedules for submission. Any burden for small ECEs is even less because these plans are subject to the Form M–1 filing requirements only for limited periods. The Department does not have sufficient data to determine the number of small plan MEWAs and ECEs that would be required to file the Form 5500 under the final rules. About 10 percent (48) of MEWAs and ECEs filing the Form M–1 in 2010 had less than 100 participants. However, the 2010 Form M–1 lacks information on the source of funding to determine which of these small MEWAs and ECEs would be ERISA-covered plans affected by the Final Rules.

Accordingly, the Department hereby certifies that this regulation does not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.), as well as Executive Order 12875, this rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

E. Executive Order 13132

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999) requires the Agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This regulation has federalism implications, because the States and the Federal government share dual jurisdiction over MEWAs that are employee benefit plans or hold plan assets. Generally, States are primarily responsible for overseeing the financial soundness and licensing of MEWAs under State insurance laws. The Department enforces ERISA's fiduciary responsibility provisions against MEWAs that are ERISA plans or hold plan assets.

Over the years, the Department and State insurance departments have worked closely and coordinated their investigations and other actions against fraudulent and abusive MEWAs. For example, EBSA regional offices have met with State officials in their regions and supported their enforcement efforts to shut down fraudulent and abusive MEWAs. States have often lobbied for stronger Federal enforcement tools to help combat fraudulent and insolvent MEWAs. By requiring MEWAs to register with the Department before operating in a State by filing the Form M–1 and to provide additional information, these final rules respond to the States' concern and enhance the State and Federal governments' joint mission to take enforcement action against fraudulent and abusive MEWAs and limit the losses suffered by American workers, their families, and businesses when abusive MEWAs become insolvent and fail to reimburse medical claims.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

■ 1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1024, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1181–1183, 1181 note, 1185, 1185a–d, and 1191–1191c. Sec. 2520.103–1 also issued under 26 U.S.C. 6058 note. Sec. 2520.101–6 also issued under 29 U.S.C. 1021(k); Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–d, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788;

■ 2. Section 2520.101–2 is revised to read as follows:

§ 2520.101–2 Filing by multiple employer welfare arrangements and certain other related entities.

(a) *Basis and scope.* Section 101(g) of the Employee Retirement Income Security Act (ERISA), as amended by the Patient Protection and Affordable Care Act, requires the Secretary of Labor (the Secretary) to establish, by regulation, a requirement that multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (as described in paragraph (b)(6) of this section), which are not group health plans, to register with the Secretary prior to operating in a State. Section 101(g) also permits the

[28] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*

[29] Kaiser Family Foundation and Health Research Educational Trust, ''Employer Health Benefits, 2009 Annual Survey.'' The reported numbers are from Exhibit 1.2 and are for the category Annual, all Small Firms (3–199 workers).

Secretary to require, by regulation, such MEWAs to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA (part 7) are being carried out in connection with such benefits. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7. This section sets out requirements for reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to in this section as Entities Claiming Exception or ECEs). The reporting requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

(1) *Administrator* means—(i) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(ii) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA); or

(iii) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, jointly and severally, the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

(2) *Entity Claiming Exception (ECE)* means an entity that claims it is not a MEWA on the basis that the entity is established or maintained pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements within the meaning of section 3(40)(A)(i) of ERISA and § 2510.3–40.

(3) *Excepted benefits* means *excepted benefits* within the meaning of section 733(c) of ERISA and § 2590.701–2 of this chapter.

(4) *Group health plan* means a *group health plan* within the meaning of section 733(a) of ERISA and § 2590.701–2 of this chapter.

(5) *Health insurance issuer* means a *health insurance issuer* within the meaning of section 733(b)(2) of ERISA and § 2590.701–2 of this chapter.

(6) *Medical care* means *medical care* within the meaning of section 733(a)(2) of ERISA and § 2590.701–2 of this chapter.

(7) *Multiple employer welfare arrangement (MEWA)* means a *multiple employer welfare arrangement* within the meaning of section 3(40) of ERISA.

(8) *Operating* means any activity including but not limited to marketing, soliciting, providing, or offering to provide benefits consisting of *medical care.*

(9) *Origination* means, with regard to an ECE, the occurrence of any of the following events (an ECE is considered to have been *originated* only when an event described below occurs)—

(i) The ECE begins operating with regard to the employees of two or more employers (including one or more self-employed individuals);

(ii) The ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated at least three years prior to the merger); or

(iii) The number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger).

(10) *Reporting or to report* means to file the Form M–1 as required pursuant to sections 101(g) of ERISA; § 2520.101–2; or the instructions to the Form M–1.

(11) *Special filing event* means, with regard to an ECE—

(i) The ECE begins knowingly operating in any additional State or States that were not indicated on a previous report filed pursuant to paragraph (e)(1)(i) or (f)(2)(i) of this section; or

(ii) The ECE experiences a material change as defined in the Form M–1 instructions.

(12) *State* means *State* within the meaning of § 2590.701–2 of this chapter.

(c) *Persons required to report*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section:

(i) The administrator of a MEWA regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE during the three-year period following an event described in paragraph (b)(9) of this section.

(2) *Exceptions*—(i) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE described under this paragraph (c)(2)(i).

(A) A MEWA or ECE licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees;

(B) A MEWA or ECE that provides coverage that consists solely of excepted benefits, which are not subject to ERISA part 7. If the MEWA or ECE provides coverage that consists of both excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to report under this section;

(C) A MEWA or ECE that is a group health plan not subject to ERISA, including a governmental plan, church plan, or a plan maintained solely for the purpose of complying with workmen's compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively; or

(D) A MEWA or ECE that provides coverage only through group health plans that are not covered by ERISA, including governmental plans, church plans, or plans maintained solely for the purpose of complying with workmen's compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively (or other arrangements not covered by ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage).

(ii) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of an entity that would not constitute a MEWA or ECE *but for* the following circumstances under this paragraph (c)(2)(ii).

(A) The entity provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles of section 414(c) of the Internal Revenue Code;

(B) The entity provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M–1 filing and is temporary in nature. For purposes of this paragraph, ''temporary'' means the MEWA or ECE does not extend beyond the end of the plan year following the plan year in which the change in control occurs; or

(C) The entity provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor, such as non-employee members of the board of directors or independent contractors, and the number of such persons who are not employees or former employees does not exceed one percent of the total number of employees or former employees covered under the arrangement, determined as of the last day of the year to be reported or, determined as of the 60th day following the date the MEWA or ECE began operating in a manner such that a filing is required pursuant to paragraph (e)(1)(i), (2), or (3) of this section.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* MEWA *A* begins operating by offering coverage to the employees of two or more employers on August 1, 2013. MEWA *A* is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

(ii) *Conclusion.* In this *Example 1,* the administrator of MEWA *A* is not required to report via Form M–1. MEWA *A* meets the exception to the filing requirement in paragraph (c)(2)(i)(A) of this section because it is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

Example 2. (i) *Facts.* Company *B* maintains a group health plan that provides benefits for medical care for its employees (and their dependents). Company *B* establishes a joint venture in which it has a 25 percent stock ownership interest, determined by applying the principles similar to the principles under section 414(c) of the Internal Revenue Code, and transfers some of its employees to the joint venture. Company *B* continues to cover these transferred employees under its group health plan.

(ii) *Conclusion.* In this *Example 2,* the administrator is not required to file the Form M–1 because Company *B's* group health plan meets the exception to the filing requirement in paragraph (c)(2)(ii)(A) of this section. This is because Company *B's* group health plan would not constitute a MEWA but for the fact that it provides coverage to two or more trades or businesses that share a common control interest of at least 25 percent.

Example 3. (i) *Facts.* Company *C* maintains a group health plan that provides benefits for medical care for its employees. The plan year of Company *C's* group health plan is the fiscal year for Company *C,* which is October 1st—September 30th. Therefore, October 1, 2012—September 30, 2013 is the 2013 plan year. Company *C* decides to sell a portion of its business, Division *Z,* to Company *D.* Company *C* signs an agreement with Company *D* under which Division *Z* will be transferred to Company *D,* effective September 30, 2013. The change in control of Division *Z* therefore occurs on September 30, 2013. Under the terms of the agreement, Company *C* agrees to continue covering all of the employees that formerly worked for Division *Z* under its group health plan until Company *D* has established a new group health plan to cover these employees. Under the terms of the agreement, it is anticipated that Company *C* will not be required to cover the employees of Division *Z* under its group health plan beyond the end of the 2014 plan year, which is the plan year following the plan year in which the change in control of Division *Z* occurred.

(ii) *Conclusion.* In this *Example 3,* the administrator of Company *C's* group health plan is not required to report via the Form M–1 on March 1, 2014 for fiscal year 2013 because it is subject to the exception to the filing requirement in paragraph (c)(2)(ii)(B) of this section for an entity that would not constitute a MEWA but for the fact that it is created by a change in control of businesses that occurs for a purpose other than to avoid filing the Form M–1 and is temporary in nature. Under the exception, ''temporary'' means the MEWA does not extend beyond the end of the plan year following the plan year in which the change in control occurs. The administrator is not required to file the 2013 Form M–1 annual report because it is anticipated that Company *C* will not be required to cover the employees of Division *Z* under its group health plan beyond the end of the 2014 plan year, which is the plan year following the plan year in which the change in control of businesses occurred.

Example 4. (i) *Facts.* Company *E* maintains a group health plan that provides benefits for medical care for its employees (and their dependents) as well as certain independent contractors who are self-employed individuals. The plan is therefore a MEWA. The administrator of Company *E's* group health plan uses calendar year data to report for purposes of the Form M–1. The administrator of Company *E's* group health plan determines that the number of independent contractors covered under the group health plan as of the last day of calendar year 2013 is less than one percent of the total number of employees and former employees covered under the plan determined as of the last day of calendar year 2013.

(ii) *Conclusion.* In this *Example 4,* the administrator of Company *E's* group health plan is not required to report via the Form M–1 for calendar year 2013 (a filing that is otherwise due by March 1, 2014) because it is subject to the exception to the filing requirement provided in paragraph (c)(2)(ii)(C) of this section for entities that cover a very small number of persons who are not employees or former employees of the plan sponsor.

(d) *Information to be reported*—(1) Any reporting required by this section shall consist of a completed copy of the Form M–1 Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) (Form M–1) and any additional statements required pursuant to the instructions for the Form M–1.

(2) *Rejected filings.*—The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with § 2560.502c–5 of this chapter.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of ERISA and § 2560.502c–5 of this chapter).

(e) *Origination, registration, and other non-annual reporting requirements and timing*—(1) *General rule for ECEs*—(i) Except as provided in paragraph (e)(1)(ii) of this section, and subject to the limitations established by paragraph (c)(1)(ii) of this section, when an ECE experiences an event described in paragraphs (b)(9) or (b)(11) of this section, the administrator of the ECE shall file Form M–1 by the 30th day following the date of the event.

(ii) *Exception.* Paragraph (e)(1)(i) of this section does not apply to ECEs that experience an origination as described in paragraph (b)(9)(i) of this section. Such entities are required, subject to the limitations established by paragraph (c)(1)(ii) of this section, to file the Form M–1 30 days prior to the date of the event.

(2) *General rule for MEWAs*—(i) *In general.* Except as provided in paragraph (e)(2)(ii) of this section, the administrator of the MEWA is required to register with the Secretary by filing the Form M–1 30 days prior to operating in any State.

(ii) *Exception.* Paragraph (e)(2)(i) of this section does not apply to MEWAs that, prior to the effective date of this section, were already in operation in a State (or States). Such entities are required to submit an annual filing pursuant to annual reporting rules described in paragraph (f)(2)(i) of this section for that State (or those States).

(3) *Special rule requiring MEWAs to make additional filings.* Subsequent to registering with the Secretary pursuant to paragraph (e)(2)(i) of this section, the administrator of a MEWA shall file the Form M–1:

(i) Within 30 days of knowingly operating in any additional State or States that were not indicated on a previous report filed pursuant to paragraph (e)(2)(i) or (f)(2)(i) of this section;

(ii) Within 30 days of the MEWA operating with regard to the employees of an additional employer (or employers, including one or more self-

employed individuals) after a merger with another MEWA;

(iii) Within 30 days of the date the number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar year; or

(iv) Within 30 days of experiencing a material change as defined in the Form M–1 instructions.

(4) *Anti-abuse rule.* If a MEWA or ECE neither offers nor provides benefits consisting of medical care within a State during the calendar year immediately following the year in which a filing is made by the ECE pursuant to paragraph (e)(1) of this section (due to an event described in paragraph (b)(9)(i) or (b)(11)(i) of this section) or a filing is made by the MEWA pursuant to paragraph (e)(2) or (3) of this section, with respect to operating in such State, such filing will be considered to have lapsed.

(5) *Multiple filings not required in certain circumstances.* If multiple filings are required under this paragraph (e), a single filing will satisfy this section so long as the filing is timely for each required filing.

(6) *Extensions.* (i) An extension may be granted for filing a report required by paragraph (e)(1), (2), or (3) of this section if the administrator complies with the extension procedure prescribed in the instructions to the Form M–1.

(ii) If the filing deadline set forth in this paragraph (e) is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(f) *Annual reporting requirements and timing*—(1) *Period for which reporting is required.* A completed copy of the Form M–1 is required to be filed for each calendar year during all or part of which the MEWA is operating and for each of the three calendar years following an origination during all or part of which the ECE is operating.

(2) *Filing deadline*—(i) *General March 1 filing due date for annual filings.* Except as provided in paragraph (f)(2)(ii) of this section, a completed copy of the Form M–1 is required to be filed on or before each March 1 that follows a period for which reporting is required (as described in paragraph (f)(1) of this section).

(ii) *Exception.* Paragraph (f)(2)(i) of this section does not apply to ECEs and MEWAs if, between October 1 and December 31, the entity is required to make a filing pursuant to paragraph (e)(1), (2), or (3) of this section and makes that filing timely.

(3) *Extensions.* (i) An extension may be granted for filing a report required by paragraph (f)(2)(i) of this section if the administrator complies with the extension procedure prescribed in the instructions to the Form M–1.

(ii) If the filing deadline set forth in this paragraph (f) is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(4) *Examples.* The rules of paragraphs (e) and (f) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* MEWA *A* began offering coverage for medical care to the employees of two or more employers on July 1, 2003 (and continues to offer such coverage). MEWA *A* has satisfied all filing requirements to date.

(ii) *Conclusion.* In this *Example 1,* the administrator of MEWA *A* must continue to file a timely completed Form M–1 annual report each year, but the administrator is not required to register with the Secretary because MEWA *A* meets the exception to the registration requirement in paragraph (e)(2)(ii) of this section and has not experienced any event described in paragraph (e)(3) that would require registering with the Secretary.

Example 2. (i) *Facts.* On August 25, 2013, MEWA *B* is operating in State *P* and has made all appropriate filings related to those operations. On December 22, 2013 one of the employers that participates in MEWA *B* is awarded a new contract in State *Q.* The employer adds an office in State *Q* and the employees there are eligible to access its group health plan.

(ii) *Conclusion.* In this *Example 2,* the administrator of MEWA *B* must report the addition of State *Q* by filing the Form M–1 within 30 days *of knowing that it is operating in State* Q.

Example 3. (i) *Facts.* As of July 1, 2013, MEWA *C* is preparing to operate in States *Y* and *Z.* MEWA *C* is not licensed or authorized to operate as a health insurance issuer in any State and does not meet any of the other exceptions set forth in paragraph (c)(2) of this section.

(ii) *Conclusion.* In this *Example 3,* the administrator of MEWA *C* is required to register with the Secretary by filing a completed Form M–1 30 days prior to operating in States *Y* or *Z.* The administrator of MEWA *C* must also report by filing the Form M–1 annually by every March 1 thereafter.

Example 4. (i) *Facts.* As of July 28, 2013, MEWA *D* is operating in States *V* and *W.* MEWA *D* has satisfied the requirements of (e)(2) and, if applicable, (e)(3) with respect to those States. MEWA *D* is not licensed or authorized to operate as a health insurance issuer in any State and does not meet any of the other exceptions set forth in (c)(2) of this section. On August 5, 2013 MEWA *D* knowingly begins operating in State *X.*

(ii) *Conclusion.* In this *Example 4,* the administrator of MEWA *D* is required to make an additional registration filing with the Secretary by September 4, 2013 (within 30 days of knowingly operating in State *X*). Additionally, the administrator of MEWA *D* must continue to file the Form M–1 annually by every March 1 thereafter.

Example 5. (i) *Facts.* ECE *A* began offering coverage for medical care to the employees of two or more employers on January 1, 2007 and ECE *A* has not been involved in any mergers or experienced any other origination as described in paragraph (b)(9) of this section.

(ii) *Conclusion.* In this *Example 5,* ECE *A* was originated on January 1, 2007 and has not been originated since then. Therefore, the administrator of ECE *A* is not required to file a 2012 Form M–1 because the last time the ECE *A* was originated was January 1, 2007 which is more than three years prior. Further, the ECE has satisfied its reporting requirements by making three timely annual filings after its origination.

Example 6. (i) *Facts.* ECE *B* wants to begin offering coverage for medical care to the employees of two or more employers on July 1, 2013.

(ii) *Conclusion.* In this *Example 6,* the administrator of ECE *B* must file a completed Form M–1 on or before June 1, 2013 (which is 30 days prior to the origination date). In addition, the administrator of ECE *B* must file an updated copy of the Form M–1 by March 1, 2014 because the last date ECE *B* was originated was July 1, 2013 (which is less than three years prior to the March 1, 2014 due date). Furthermore, the administrator of ECE *B* must file the Form M–1 by March 1, 2015 and again by March 1, 2016 (because July 1, 2013 is less than three years prior to March 1, 2015 and March 1, 2016, respectively). However, if ECE *B* is not involved in any mergers and does not experience any other origination as described in paragraph (b)(9) of this section, there would not be a new origination date and no Form M–1 is required to be filed after March 1, 2016.

Example 7. (i) *Facts.* ECE *D,* which currently operates in State *A* and is still within the three-year window following its origination and the timely filing related thereto, is making preparations to operate in State *B* beginning on November 1, 2013.

(ii) *Conclusion.* In this *Example 7,* by operating in State *B,* ECE *D* experiences a special event within the three-year window following its origination and must make a filing by December 2, 2013.

Example 8. (i) *Facts.* Same facts as *Example 7.* ECE *D* satisfied its special filing requirement but is unsure about its annual filing requirements.

(ii) *Conclusion.* ECE *D* is exempt from the next annual filing due March 1, 2014 pursuant to the filing deadline exception under (f)(2)(ii) of this section. However, ECE *D* must continue making annual filings for the remainder of the three years following its origination.

Example 9. (i) *Facts.* MEWA *E* begins distributing marketing materials on August 31, 2013.

(ii) *Conclusion.* In this *Example 8,* because MEWA *E* began operating on August 31, 2013, the administrator of MEWA *E* must register with the Secretary by filing a completed Form M–1 on or before August 1, 2013 (30 days prior to operating in any State). In addition, the administrator of MEWA *E* must file the Form M–1 annually by every March 1 thereafter.

Example 10. (i) *Facts.* Same facts as *Example 9,* but MEWA *E* registers on or before August 1, 2013 by filing a Form M–1 indicating it will begin operating in every State. However, in the calendar year immediately following the filing, MEWA *E* only offered or provided benefits consisting of medical care to participants in State *Z.*

(ii) *Conclusion.* In this Example 10, the registration for all States (other than State Z) have lapsed under (e)(4) because MEWA *E* only offered or provided benefits consisting of medical care to participants in State *Z* in the calendar year immediately following the filing. If subsequently, MEWA *E* begins offering or providing benefits consisting of medical care to participants in any additional State (or States), it must make a new registration filing pursuant to (e)(3) of this section.

(g) *Electronic filing.* A completed Form M–1 is filed with the Secretary by submitting it electronically as prescribed in the instructions to the Form M–1.

(h) *Penalties*—(1) *Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of ERISA for persons who fail to file the information required under this section, see § 2560.502c–5 of this chapter. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of ERISA, see §§ 2570.90 through 2570.101 of this chapter.

(2) *Criminal penalties and procedures.* For information on criminal penalties under section 519 of ERISA for persons who knowingly make false statements or false representation of fact with regards to the information required under this section, see section 501(b) of ERISA.

(3) *Cease and desist and summary seizure orders.* For information on the Secretary's authority to issue a cease and desist or summary seizure order under section 521 of ERISA, see § 2560.521.

■ 3. Section 2520.103–1 is amended by:

■ a. Revising paragraphs (a) introductory text, (b) introductory text and (c)(1),

■ b. Amending paragraph (c)(2)(ii)(C) by removing the reference ''and'' at the end of the paragraph,

■ c. Removing the period at the end of paragraph (c)(2)(ii)(D) and adding the reference ''; and'' at the end of the paragraph,

■ d. Adding a new paragraph (c)(2)(ii)(E),

■ e. Redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f).

The revisions and additions read as follows:

§ 2520.103–1 Contents of the annual report.

(a) *In general.* The administrator of a plan required to file an annual report in accordance with section 104(a)(1) of the Act shall include with the annual report the information prescribed in paragraph (a)(1) of this section or in the simplified report, limited exemption or alternative method of compliance described in paragraph (a)(2) of this section.

* * * * *

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.* Except as provided in paragraph (d) and paragraph (f) of this section and in §§ 2520.103–2 and 2520.104–44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2), paragraph (d) and paragraph (f) of this section, and in §§ 2520.104–43, 2520.104a–6, and 2520.104–44, the annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

(2) * * *

(ii) * * *

(E) Is not a plan subject to the Form M–1 requirements under § 2520.101–2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities).

* * * * *

(f) *Plans subject to the Form M–1 filing requirements under § 2520.101–2.* The annual report of an employee welfare benefit plan that is subject to the Form M–1 requirements under § 2520.101–2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities) during the plan year shall also include any statements or information required by the instructions to the Form 5500 relating to compliance with the Form M–1 filing requirements under § 2520.101–2.

* * * * *

■ 4. Section 2520.104–20 is amended by removing the reference ''and'' in paragraph (b)(2)(iii), removing the period at the end of paragraph (b)(3)(ii) and adding the reference ''; and'' in its place, and adding a new paragraph (b)(4) to read as follows:

§ 2520.104–20 Limited exemption for certain small welfare plans.

* * * * *

(b) * * *

(4) Which are not subject to the Form M–1 requirements under § 2520.101–2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities).

* * * * *

■ 5. In § 2520.104–41, revise paragraph (c) to read as follows:

§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.

* * * * *

(c) *Contents.* The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section shall file, in the manner described in § 2520.104a–5, a completed Form 5500 ''Annual Return/Report of Employee Benefit Plan'' including, if applicable, the information described in § 2520.103–1(f) or, to the extent eligible, a completed Form 5500–SF ''Short Form Annual Return/Report of Small Employee Benefit Plan,'' and any required schedules or statements prescribed by the instructions to the applicable form, and, unless waived by § 2520.104–44 or § 2520.104–46, a report of an independent qualified public accountant meeting the requirements of § 2520.103–1(b).

Signed this 26th day of February, 2013.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2013–04863 Filed 2–28–13; 8:45 am]

BILLING CODE 4510–29–P