

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In this Box

FILED

1991 APR -4 AM 1:39

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: EMPLOYMENT SECURITY TITLE NUMBER: 83

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: I

TITLE OF RULE BEING AMENDED: Regulations of the Commissioner
of Employment Security

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 637

SECTION §64-5-7, PASSED ON March 9, 1991

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: May 1, 1991


Chief Counsel

WEST VIRGINIA LEGISLATIVE REGULATIONS
Department of Employment Security

FILED

JUN 18 1965

Chapter 21A-2

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Series I

Subject: Regulations of the Commissioner of Employment Security

Section 1. General

1.01. Scope.--These regulations establish rules for the interpretation of the West Virginia Unemployment Compensation Law. Also, these regulations set forth certain procedure for the implementation of the Law.

1.02. Authority.--These regulations are issued in conformity with Chapter 21A of the West Virginia Code of 1931, as amended.

1.03. Effective Date.--These regulations are promulgated on the 5th day of May, 1965, and become effective July, 1965.

1.04. Filing Date.--These regulations were filed in the office of the Secretary of State on the 5th day of May, 1965, and refiled as required by Law on December 29, 1982.

Section 2. Contributions by Employers

2.01. Contribution shall become due and payable quarterly on the last day of the month next following the quarter for which contributions have accrued. "Quarter" means the calendar quarter ending March 31, June 30,

September 30, and December 31. Contributions shall include contributions with respect to wages paid for employment within the quarter.

2.02. Upon the written request of an employer filed with the Commissioner on or before the due date of any required payment, the Commissioner, for good cause shown, may grant, in writing, an extension of time for making such payment, but no extension shall exceed thirty days. In case an employer who has been granted an extension to make a required payment fails to make such payment on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

2.03. The first contribution payment of any employer who becomes liable for contributions in any year because of employment performed for him within such year, or wages paid, or as the result of voluntary election to become an a covered employer, shall become due and be payable on the last day of the month next following that quarter wherein liability was incurred or voluntary election was approved. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

2.04. The Commissioner may, by special rule, assign to a newly subject employer due dates permitting the payment of his first contribution in installments, but the last installment shall be due not later than the 15th day

preceding the last day for filing tax returns as required under Chapter 23 of the Internal Revenue Code. If the amount of any such installment for which any due date is assigned is not paid on or before such date, the total amount of the unpaid contribution shall become due and payable upon notice and demand by the Commissioner.

Section 3. Payments in Lieu of Contributions by Reimbursement Employers

3.01. Reimbursement Payments by Nonprofit Organization (or Group of Organizations) and Political Subdivisions of the State of West Virginia

Any political subdivision of the State of West Virginia; or nonprofit organization (or group of organizations) which has elected to make reimbursement payments in lieu of contributions shall make such payments to the fund in the following manner, which provision shall also be applicable to political subdivisions which elect coverage. **On or before January 31, April 30, July 31 and October 31 of each calendar year, the Commissioner shall bill each nonprofit organization or political subdivision of the State for an amount representing one of the following: (i) for one thousand nine hundred seventy-two, one-fourth of one percent of its total payroll for one thousand nine hundred and seventy-one; or (ii) for years after one thousand nine hundred seventy-two, one-fourth of such percentage of its total payroll for the immediately preceding calendar year as the Commissioner shall determine. Such determination shall be based each year on the average benefit costs**

attributable to service in the employ of nonprofit organization or political subdivision during the preceding calendar year; or (iii) for any organization or political subdivision which did not pay wages throughout four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the Commissioner shall determine. The Commissioner shall notify such reimbursement employers on or before March 31 of each calendar year the amount of the percentages provided for in (ii) and (iii) of this paragraph.

At the end of each taxable year, the Commissioner shall determine whether the total of payments for such year made by a nonprofit organization or political subdivision is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization or political subdivision. Each nonprofit organization or political subdivision whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund. If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the Commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year. Such refunds shall be made from the Unemployment Compensation Reimbursement Employers' Reserve Account provided for in Section 3.03 below.

At the close of each calendar quarter, the Commissioner will advise each reimbursement employer by means of prescribed forms furnished by the West

Virginia Division of Employment Security of the total benefits paid to individuals having base period wages from this employer. These forms will list such individuals by social security number and name, the amount of benefits paid to each individual, the employer's share of the total benefits paid, and the amount of reimbursement due and payable by the employer.

Payment for reimbursement shall be made by the employer in its entirety not later than thirty days after such statement was mailed to the last known address of the nonprofit organization or political subdivision or was otherwise delivered to it. **unless there has been an application for review and redetermination in accordance with Article 5, Section 3a(2)(c) of the Act.** There is no provision for the noncharging of benefits to an employer who elects to make reimbursement payments in lieu of contributions.

3.02. Past Due Payments in Lieu of Contributions

Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that pursuant to section seventeen of article five and the provisions of article ten of Chapter 21A, apply to past due contributions. Unpaid amounts in lieu of contributions shall be subject to the same assessment and civil action provisions of Chapter 21A as apply to unpaid contributions.

3.03. Depositing of Reimbursement Payments

The moneys received by the Commissioner from these reimbursement employers, as provided for in the preceding paragraph(s) shall be deposited by the Commissioner, in a bank or banks of his choosing, in an interest bearing account designated as Unemployment Compensation Reimbursement Employers' Reserve Account. Such funds are not to be deposited in, or intermingled with, clearing account funds and such funds are not a part of the Unemployment Compensation Trust Fund. Interest accruing from this account, when received, shall be proportionately credited to each reimbursement employer's reserve account.

Refunds made to reimbursement employers because of excessive reimbursement payments made in preceding calendar years shall be made from funds deposited to this account.

3.04. Reimbursement Employer's Quarterly Statement of Benefits Paid to Former Employees

At the close of each calendar quarter, the Commissioner will advise each reimbursement employer by means of Form WWUC-B-206, Reimbursement Employer's Quarterly Statement of Benefits Paid to Former Employees, of the total benefits paid to individuals having base period wages from this employer. This form will list such individuals by social security number and name, the amount of benefits paid to each individual, the employer's proportionate share to the total benefits paid, and the percentage of employer's share to the total benefits paid, the amount of reimbursement requested from the employer, or the

amount that has been deducted from the employer's reserve account, whichever is appropriate.

Payment of this request for reimbursement shall be made by the employer not later than thirty days after such statement was mailed to the last known address of the nonprofit organization or political subdivision or was otherwise delivered to it, unless there has been an application for review for redetermination in accordance with Article 5, Section 3a(2)(c) of the Act.

Section 4. Interest

4.01. Article 5, Section 17, of the Law provides that "Payments unpaid on the date on which due and payable, as prescribed by the Commissioner, shall bear interest at the rate of one percent per month until payment plus accrued interest is received by the Commissioner." The Commissioner accordingly prescribes:

Interest prescribed by law on overdue contribution payments shall be computed from the day following the due date **thereof** to and including the date paid. Interest due shall be computed at the rate of **one-tenth** one-thirtieth of one percent for each **three-day period or part thereof** day that contribution payments are overdue.

Section 5. Records

Article 10, Section 4, as amended, of the Law, provides that "An employing unit shall keep true and accurate work records containing such information as the Commissioner may prescribe." The Commissioner accordingly prescribes:

5.01. Each employing unit shall keep **pay roll** payroll records for a period of not less than five years which shall show:

- (A) The period covered by the payroll
- (B) The place of employment within the state (see section 5.02).
- (C) The scheduled hours per day or week.

For each individual worker and each **pay roll** payroll period, the **pay roll** payroll records shall show:

- (D) His social security account number.
- (E) His name.
- (F) His wages for employment under the law.

(G) The date on which he was hired, rehired, or returned to work after temporary lay-off.

(H) The date when work was terminated by lay-off, quitting, discharge, or death.

(I) His money wages in each week and his total wages for all periods ending in each calendar quarter, showing separately (a) money wages, (b) the cash value of other remuneration, and (c) any special payments for services other than those rendered exclusively in a given quarter, such as annual bonuses, gifts, prizes, etc., showing separately (a) money payments (b) other remuneration, and the nature of said payments.

(J) Cause of any separation or lay-off.

(K) If worker is on a variable pay basis, the hours worked, and wages earned, in each week.

(L) The cause of all lost time for each individual in each week.

5.02. A worker's place of employment shall be recorded as the county in which he performs his work. The place of employment of a worker who performs his work in more than one such county shall be recorded as the county in West Virginia in which he has his base of operations; or, if he has no base of operations in West Virginia, as the county in West Virginia from which he

receives his principal or immediate direction or control; or, if the place from which he receives his principal or immediate direction or control is also outside West Virginia, as the county within West Virginia in which he has his residence.

5.03. Upon request by the Commissioner, any employer authorized to elect coverage on a reimbursement payments basis under the Law shall furnish to the department, on a form designed by the Commissioner for this purpose, within five days of receipt of such request, the wages paid to such of their employees as is required to enable the Commissioner to determine the amount of benefits payable to such claimants.

Whenever the political subdivision or nonprofit organization fails to comply with this request for wages within this five day period, the individual's benefit entitlement shall be determined by an affidavit based upon the individual's statement as to the amount of wages earned by him in this employment during his base period.

Section 6. Reports

Article 10, Section 11, of the Law, provides that the Commissioner may require an employing unit to provide sworn or unsworn reports concerning:

- (A) The number of individuals in its employ.

- (B) Individually their hours of labor.
- (C) Individually the rate and amount of wages.
- (D) Such other information as is reasonably connected with the administration of this chapter.

The Commissioner accordingly prescribes:

6.01. Each contributing and reimbursement employer shall report quarterly on or before the last day of the month next following the calendar quarter for which contributions have accrued, on forms to be prescribed by the Commissioner:

- (A) The unemployment compensation registration number of the employer, his name, and the address at which pay roll payroll records are maintained.
- (B) The social security account number and name of each worker.
- (C) Contributing employers shall report the total wages, taxable and non-taxable, paid within the quarter for employment, which includes money wages and the cash value of other remuneration.
- (D) Such other information as may be prescribed on the form.

6.02. Upon the written request of any employer filed with the Commissioner on or before the due date of any contribution, the Commissioner, for good cause shown, may grant, in writing, an extension of time, not to exceed thirty days, for reporting such information.

6.03. Instructions accompanying any report form provided by the Department shall have the force and effect of regulations issued pursuant to Article 2, Section 19, of the West Virginia Unemployment Compensation Law.

Section 7. Definitions

7.01. Contributions and wages shall be reported on a wages paid basis. Wages paid shall be deemed to consist of wages actually or constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession, or whenever they are due an employee and are not actually paid because of employer's refusal or inability to pay.

7.02. "Week" for the purpose of benefit determination for total and partial unemployment shall be deemed to mean the **first day of an individual's total unemployment and the six consecutive days next succeeding** calendar week, ending at midnight Saturday. An individual's week of total unemployment shall

be deemed to commence only after such individual **registers in person and** files a claim at a local **employment unemployment claims** office or officially designated itinerant point **on the following his** first day of **his total** unemployment. A claim filed at an officially designated itinerant point shall be effective the Sunday of the week in which the claimant was separated; provided, the separation occurred after the most recent date the itinerant point officially operated. Otherwise, a week for the purpose of benefit determination shall be deemed to mean the first day of **registration of an individual and the six consecutive days next succeeding** the calendar week in which the individual files a claim for benefits. An individual's week of partial unemployment shall be deemed to commence the first day of the calendar week for which the employer issues him a low earnings report; provided, that the claimant files his claim in accordance with Section 16 of these Regulations. Succeeding weeks of total and partial unemployment shall be deemed to mean seven-day periods succeeding the first such calendar week.

7.03. "Week" for determining partial unemployment shall be (a) the pay roll week, or (b) if there is no established pay roll week, the week shall be the calendar week.

7.04. A "week" for an individual who is totally unemployed and who has earned wages in excess of \$15.00 shall be his regular benefit week.

7.05. An individual's week of total unemployment shall be deemed to

commence only after his registration at an employment office, except as otherwise provided in these regulations.

7.06 7.03. For the purpose of application of Article 6, Section 1-A, "Seasonal Employment," a working day in the base period of an individual shall be deemed to mean the customary or regularly scheduled number of hours of work which constituted a full working day at the operation of the employer by whom the individual was employed during such base period; Provided, however, that if the operations of the individual's employer were carried on in shifts during the base period of the individual, a day shall be deemed to mean the number of hours customarily worked in a shift. Fractional parts of days or shifts worked shall be taken into consideration in computing the total number of days or shifts worked as the case may be.

7.07. "Calendar quarter" is a three-month period ending on March 31, June 30, September 30, or December 31.

7.08. Employment cannot be considered to be "contract labor" unless and until it is shown to the satisfaction of the Commissioner that the following conditions are met in their entirety by the employee:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services; and

(B) All service is either outside the usual course of the business or such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

Section 8. Voluntary Payments

8.01. A voluntary payment made in accordance with Article 5, Section 4-a of the Unemployment Compensation Law, as amended, in order to be used in the computation of the rate for an employer for any particular calendar year, must be mailed within thirty (30) days from the date of mailing by the **Department** Division to the employer of his rate statement for such calendar year. The Commissioner may grant a thirty-day extension for the submission of such voluntary payment; provided that such request must be post-marked by the last date on which to submit the voluntary payment. Such payment must be made by separate check or the equivalent accompanied by transmittal letter particularly designating that it is for the purpose of a voluntary payment under said Section 4-a, and that it is for the purpose of producing a rate to be designated in such letter. If an employer has made such a voluntary payment, and, through error in his computation, the payment is not sufficient to produce the designated rate, he may (with the approval of the Commissioner) make an additional payment within ten (10) days from the mailing date of the

rate as recomputed so as to include the voluntary payment. In order to produce the designated rate, his rate will be recomputed, including such additional payment in the final computation.

Section 9. Use of Credits in Rate Computation

9.01. Adjusted credits and adjusted benefit charges resulting from administrative audits or decisions of the Commissioner made under Section **16 17** of these regulations involving benefits paid for weeks ending prior to July 1, of any calendar year shall be taken into consideration in the final determination of the contribution rate **of the employer for thirty days prior to the mailing of the notice of contributions rate to the employer** the succeeding calendar year, provided that the adjustment is made not later than June 30.

Section 10. Submittal of Separation Information by Employing Units

10.01. Each employing unit upon receipt of **Notice of Claim Filed, Form WVUC-B-6A, as revised,** a notice of a claim filed **(reverse side of employer's copy of Initial Claim for Benefits, Form WVUC-B-6),** or **Request for Separation Information, Form WVUC-B-175,** a request for separation information is required to give the information requested on the form and mail or deliver it to the **Department of Employment Security, 112 California Avenue, Charleston, West Virginia 25305** local office where the claim was filed, or as otherwise directed

by the commissioner, so that it will reach the **Department** Division of Employment Security local office no later than the fourth calendar day after the day the notice was delivered or mailed to the **last** employing unit. If the separation or other information needed is not returned within the specified time, the claim will be paid if the claimant is otherwise eligible and not otherwise disqualified.

10.02. Upon special request from the Commissioner or one of his deputies for a notice of separation covering any worker, an employing unit shall, within forty-eight hours following the receipt of such request, completely fill out such notice and return it to the address specified in the request.

Section 11. Employer's Report of Low Earnings

11.01. In any week in which an employee is partially unemployed, each employing unit is required to deliver to such employee on or before the payday for the week in which the low earnings occurred, or mail to his last known address if delivery is impossible or impracticable or if requested by a claimant upon the claimant's showing good cause for such request, a report of low earnings on **Form WVUC-B-11 as revised** a prescribed form furnished by the West Virginia Division of Employment Security. Such form shall set forth: (a) the employee's name and social security number, (b) the employer's name, address, and account number, (c) the week ending date, (d) the earnings during

the week, (e) any pertinent information regarding claimant's eligibility, and (f) such other information as required by such form. An employee is to be assumed to be partially unemployed in any week in which, by reason of a reduction in hours worked resulting solely from lack of work **(including weeks during which no work was available and during which the employee has not been separated from employment),** his earnings for the week are less than his weekly benefit amount plus **\$15.00** \$25.00. Such **Low Earnings Report form** shall not be given to any worker in any week during which the worker has earned in excess of his weekly benefit amount plus **\$15.00** \$25.00.

11.02. Any employing unit may report employees' low earnings on its own form in lieu of **Form WWUC-B-11** the prescribed form provided that such form has received prior approval from the Commissioner.

11.03. Upon request from the Commissioner or a deputy for a report of low earnings concerning any worker, an employing unit shall, within forty-eight hours following the receipt of such request, completely fill out such notice and return it to the address specified in the request.

Section 12. Employer Report of Vacation Pay

12.01. Each employer shall report to this Department on a form prescribed by the Commissioner, at least two weeks prior to any fixed vacation period: (a) the amount of vacation pay paid or to be paid to any individual

whose separation from employment occurred or will occur prior to such fixed vacation period; (b) the individual's name and social security number; (c) the beginning and ending date of the vacation period; (d) the date of the vacation payment; and (e) the number of weeks covered by the payment for each individual listed.

12.02. Each employer shall submit a report to this Department immediately upon payment of vacation pay to any individual who has been separated from employment and who at the time of such payment does not have a fixed vacation period. This report is to be made on the same form specified in section 12.01 above and shall include the information required in items (a), (b), (d), and (e) in section 12.01. The vacation period for any such individual who is in current claim status at the time the vacation payment was made shall be deemed to be the benefit week in which the said payment was paid and the number of consecutive benefit weeks immediately following equal to the number of weeks for which the vacation payment is paid. The vacation period for any such individual who is not in current claim status at the time of the vacation payment shall be deemed to begin on the day following the payment and shall consist of the same number of seven day periods as the number of weeks covered by the payment.

12.03. In any week in which a vacation payment is made to an employee who is potentially partially unemployed, the Low Earnings Report, Form WWUC-B-11, as revised, issued to such employee must indicate the specific period of vacation to which the vacation period is not so indicated upon said Form WWUC-

B-11, as revised, the vacation period for such individual shall be deemed to be the benefit week in which said payment was paid and the number of consecutive benefit weeks immediately following equal to the number of weeks for which the vacation period is paid.

Section 12. Labor Management Dispute Claims

12.01. A. Any individual initially claiming benefits during a labor-management dispute within which he is involved shall: (1) report to the local unemployment compensation office nearest his place of residence; (2) file an application for benefits on a prescribed form furnished by the West Virginia Division of Employment Security. Individuals involved in labor disputes shall be considered as registered for work when they file an initial claim for benefits.

B. During any period of work stoppage due to a labor-management dispute, claims filed by employees involved in the dispute may be backdated for a period of up to six (6) weeks

commencing from the Sunday of the week in which the labor dispute occurred. Any claims filed after the expiration of the above six-week period shall become effective the Sunday

of the week in which the claim is filed if it is otherwise a
valid claim for benefits.

Section 13. Claims and Registration

13.01. Claims and Registration

(A) Any individual initially claiming benefits **or waiting-period credit for any week in which he performs no service and with respect to which no wages are payable to him shall report in person** shall (1) file a new claim for benefits at the local unemployment compensation claims office where he is available for work and shall (2) file an application for work at the local **unemployment compensation claims public employment** office where he is available for work. **shall there (a) register for work if he is separated from employer, and (b) file a new claim for benefits.** Individuals who belong to a union which refers members to employment from a union hall, or are partially unemployed, or have a definite return-to-work date (provided that the return-to-work date is within a three-week period beginning with the Sunday of the week in which the claimant was notified of the return-to-work date), may be considered as registered for work when they file a claim for benefits. Unemployment compensation staff shall determine which claimants must report to the local public employment office to file an application for work. A claim for total benefits, when filed, shall constitute both the individual's registration for work and his claim for benefits or waiting-period credit.

(B) In order to establish eligibility for benefits or for waiting-period credit for weeks of total unemployment during a continuous period of total unemployment, the claimant shall **continue to report in person bi-weekly** file his continued claim for benefits as instructed at the local unemployment compensation claims office where he filed his initial claim for benefits to file his claim for waiting-period credit and his first compensable week; thereafter, he shall be permitted to file weekly or bi-weekly his continued claim for benefits by mail, on prescribed forms furnished by the Unemployment Compensation **Division** Section of the West Virginia **Department** Division of Employment Security.

(C) Whenever the claimant (1) returns to work in regular or temporary employment for five consecutive days or more, or (2) whenever questions about his rights to benefits are raised by circumstances such as (a) the conditions or circumstances of his separation from employment; (b) his answers to questions on mail claim(s) indicates he may be unable to work or that there may be undue restrictions on his availability for work or that his search for work may be inadequate or that he may be disqualified; (c) his answers to questions on mail claims create uncertainty about his credibility or indicate a lack of understanding of the applicable requirements; or (d) the claimant's record shows that he has previously filed a fraudulent claim, the claimant shall again report in person at the local unemployment compensation claims office where he has been filing his claim by mail to file his claim for benefits or to clear up the matter(s) which caused him to report in person. Thereafter, he may continue to file his claim for benefits weekly or bi-weekly by mail.

(D) The Commissioner, for reasons found to constitute good cause for an individual's inability to report either by mail or in person to the local unemployment compensation claims office at which he has been filing his claims for benefits and is registered for work, may permit such individual to report in person or by mail to any other **local** unemployment compensation claims office in accordance with the procedure for transfer of claims.

13.02. Claims Filed Before or After Regular Reporting Day by Individuals Located in Area of A Full-Time Unemployment Compensation Claims Office

(A) The Commissioner for reasons found to constitute good cause for any individual's failure to **appear** file his continued claim on his regular reporting day **at the local employment office** may accept a continued claim for such individual if such continued claim is filed **in person** within ten days from his regular reporting day for the week for which he is claiming benefits for total unemployment **or he may report on the last day of his benefit week or any day between that day and his reporting day if he is seeking work or returns to work on his regular reporting day.** Further, if the Commissioner determines the reasons constitute good cause and such reasons were beyond the individual's control, the Commissioner, at his discretion, may extend the ten-day limit to ensure that a penalty, if any is imposed, is reasonable and just.

(B) An individual who has returned to employment **and who cannot report in person to file a continued claim on his regular reporting day because of this employment** may at any time within **thirty ten** days from his regular reporting day **report at the public employment office most convenient to him in this state or any other state to file such continued claim; or if it is impossible, because of this employment, for such individual to report at an employment office in person, he may within such thirty-day period** file such continued claim by mail at the local **employment office** unemployment compensation claims office where he had been filing prior to his return to employment. **Such individual shall file his claim on a reporting form furnished to him by such local office.**

(C) An individual who cannot **report** file a continued claim on his regular reporting day **to file a continued claim** because of his own illness or disability may be allowed to file such continued claim at any time within **thirty ten** days from his regular reporting day: Provided, that such individual shall bring a certificate from his physician which will state (a) that the individual was not able to **report** file his claim on his regular reporting day; and (b) the nature of the illness or disability or, if such information is privileged or confidential, that the undisclosed illness or disability was of a nature to prevent the claimant's **reporting** filing his claim on his regular reporting day; and (c) the date on which the individual first became able to **report in person to the local employment office: Provided, however, that the individual report in person at the local employment office within six days after the date he becomes able to report, provided further that this**

requirement shall not be construed as extending the reporting period beyond thirty days from the individual's regular reporting day; and file his claim.

Provided further, that nothing in this regulation shall be construed to mean that an individual may be paid benefits for any period in which he was not able to work.

13.03. Claims and Registration for Individuals Located in Isolated Areas

(A) In order to claim benefits or waiting-period credit for total unemployment, any individual located in an isolated area served only by the itinerant service of the local **employment unemployment compensation claims** office shall report in person to such itinerant service at the first available opportunity therefore next following his total unemployment and shall (a) register for work, and (b) file a claim for benefits.

(B) In order to establish eligibility for benefits or for a waiting-period credit for weeks of total unemployment during a continuous period of total unemployment, the claimant shall **(a) continue to report in person on the dates specified for reporting, and (b) file continued claims for benefits file** continued claims for benefits on the dates specified for reporting.

(C) An individual who has returned to employment **and who cannot report in person to file a continued claim on his regular reporting day because of this employment** may at any time within **forty-five** ten days from his regular

reporting day **report at the public employment office most convenient to him in this state or any other state to file such continued claim or if it is impossible, because of this employment, for such individual to report to an employment office in person, he may within such forty-five day period file such continued claim** by mail at the local **employment** unemployment compensation claims office **where he had been filing prior to his return to employment. Such individual shall file his claim on a reporting form furnished to him by such local** where he had been filing prior to his return to employment.

(D) If the claimant is unable to report and file his claim on his regular reporting day because he was seeking work on that day, or because he was ill or disabled on such day, he shall be permitted upon submitting sufficient proof thereof to file his claim within **forty-five** ten days from said regular reporting day.

13.04. Mail Claims

Notwithstanding the provisions of paragraphs (A), (B), and (C) of subsection 13.01, a claimant must be permitted to file a claim by mail in any of the following circumstances:

(A) The claimant is located in an area requiring the expenditure of an unreasonable amount of time or money in traveling to the nearest facility established by the state agency for filing claims in person;

(B) Conditions make it impracticable for the Unemployment Compensation **Division** Section of the West Virginia **Department** Division of Employment Security to take claims in person;

(C) The claimant has returned to full-time work on or before the scheduled date for filing a claim; provided, that the claimant is unable to **report in person** file his claim as provided in subsection 13.01(D) of these Regulations.

(D) An individual filing continued claims by mail may not date and mail his claim for benefits before Sunday, nor later than Tuesday, of the next week following the end of the last week ending date shown on the prescribed weekly certification claim form. However, for good cause shown, the individual may be permitted to file his claim within ten (10) days after his regular filing date as provided in Section 13.02 of these Regulations.

Section 14. Forms Prescribed for Recording Claims for Benefits

14.01. **Initial**, New or additional claims for total unemployment shall be made on **WUC-B-6, as revised**, prescribed forms furnished by the West Virginia Department Division of Employment Security, setting forth (a) that the individual claims benefits, (b) that he has registered for work, and (c) such other information as is required thereby. **This claim for benefits for total**

unemployment shall constitute the individual's claim for benefits or waiting-period credit.

14.02. When an initial claim in a benefit year is for benefits for partial unemployment, **Form WVUC-B-6, as revised,** a prescribed form furnished by the West Virginia Division of Employment Security shall be **filled out completed.** This is for the purpose of furnishing the claimant, employer, and local office with the determination.

14.03. Continued claims for benefits for total unemployment shall be made on **Form WVUC-B-89, as revised,** a prescribed form furnished by the West Virginia Division of Employment Security and shall constitute the individual's claim for benefits or waiting-period credit. This certification on **Form WVUC-B-89, as revised** the prescribed form includes, but is not limited to, the following eligibility provisions, determining that the individual:

- (A) Has registered for work and claims benefits.
- (B) Was unemployed, able and available for full-time work and was seeking full-time work.
- (C) Has not refused **no** a suitable job offered him and did not fail to apply for any suitable job to which he was referred by **a public** an employment service office.

(D) Has reported all work performed and wages earned.

14.04. Claims for benefits for partial unemployment filed after a benefit year has been established shall also be made on Form WWUC-B-89, as revised, in the portion of that form reserved for partial claims.

Section 15. Disqualifications

15.01. If the benefit year ends during a period of disqualification, the weeks of disqualification extending into the new benefit year shall be charged at the individual's weekly benefit rate for such new benefit year.

Section 16. Benefits for Individuals who had Some Earnings and Performed Some Services during Calendar Week.

16.01. Immediately following the date of delivery of the low earnings report to an individual by his employer, the said individual may file a claim for benefits either by mail or in person, depending upon the circumstances. If the individual is filing for one week only of such unemployment and he has returned to work, he may file his claim for benefits by mail. If the individual has returned to work when the employer delivers the low earnings report to him, the said individual may file a claim for benefits by mail, irrespective of the number of weeks for which the individual is filing. If

said claim for benefits is filed by mail the claimant shall complete the claim form made part of his low earnings report, and shall mail it to the local unemployment compensation claims office to which he would normally report. However, if the individual has not returned to work when the low earnings report is delivered to him and is filing for more than one week of such unemployment, the claimant shall file his claim for said benefits by reporting, in person, to the local unemployment compensation claims office or itinerant point which services the area in which the claimant lives and/or works, and presenting his low earnings report for payment. Claimants filing under requirements outlined above shall then be paid benefits for such unemployment in accordance with the provisions as set forth in **Section 11, Article 6** Article 6, Section 11, of the **State** West Virginia Unemployment Compensation Law.

16.02. Within **four weeks** ten days following the date of delivery of the low earnings report to the individual, a said claim shall be filed under requirements set forth in Section 16.01 above. The filing date of a claim filed by mail will be the postmark date on the envelope in which the claim is received. If good cause is shown for failure to file a claim for benefits within the period outlined above, then an individual may file his claim for benefits within **seven** ten days after being appropriately notified of his potential rights to benefits under the benefit provisions of the **State** West Virginia Unemployment Compensation Law. Provided, however, that such filing will not be permitted after 13-week period subsequent to the end of the benefit year during which such period of unemployment occurred.

16.03. Mail Claims

(A) The maximum number of consecutive weeks in which a claimant may file for by mail shall be four. A new series of four consecutive weeks shall begin the week after a week in which the claimant reports in person to his claims office or itinerant point to file his claim for said benefits; claimant shall be permitted to file his continued claim by mail under the same conditions as prescribed in subsection 13.01.

(B) Notwithstanding the provisions of subsections 16.01, 16.02 and 16.03(A), a claimant must be permitted to file a claim by mail under the same circumstances as provided in subsections 13.01(D) and 13.02.

16.04. The beginning day of the benefit year for an individual whose first claim filed is a claim for said benefits shall be the first day of the first week for which he is claiming benefits.

Section 17. Administrative Hearings Upon Applications for Review and Redetermination of Contribution Rates and Chargeability of Benefits to an Employer's Account.

17.01. Application for review and redetermination of contribution rate

An employer desiring to have a review and redetermination of his contribution rate shall file an application for such review within **sixty (60)** thirty (30) days after the mailing to the employer at his last known address of the notice of contribution rate.

17.02. Application for review and redetermination of chargeability of benefits

An employer desiring to protest and to have a review and redetermination of the charging of any particular benefits to his account shall file a written application in duplicate for such review and redetermination with the West Virginia **Department** Division of Employment Security, Attention: Legal **Division** Section, 112 California Avenue, Charleston, WV 25305, within sixty days after the mailing to the employer at his last known address of the notice of charging of such benefits. Such application shall state the name and address and official position of any person filing the application on its behalf; the name, address, and social security number of the individual to whom were paid the benefits the charging of which to applicant's account is protested; the week-ending period or periods for which the benefits charged were paid; the date of the statement on which the protested charge or charges appeared; the date on which the statement was received by applicant; and a brief statement of the reasons for the application. Forms for making such applications will be furnished upon request addressed as above. However, this regulation does not apply to an employer who has chosen to make payments in lieu of contributions.

17.03. Hearings

Upon the receipt of an application for review and redetermination of an employer's contribution rate, or of the charging of certain benefits to an employer's account, as the case may be, the Commissioner shall schedule a hearing and shall mail a notice of hearing to the employer at his last known address at least ten (10) days before the hearing, specifying the time and place of the hearing. Hearings shall be held at the central office of the West Virginia **Department** Division of Employment Security, unless in his discretion the Commissioner or his special deputy may determine upon another place within the state. The Commissioner or a special deputy designated in each case by the Commissioner shall preside over the hearing. Hearings shall be conducted informally and in such manner as to bring out the facts relevant to the determination of the application. All testimony at the hearing shall be by oath or affirmation and shall be recorded but need not be transcribed unless requested by any party in interest. The employer may make a written submission of the facts involved and shall be permitted a reasonable opportunity to present oral argument, supplemented by written briefs, upon the questions involved. The Commissioner or his special deputy may decide the questions on the basis of such stipulation and arguments, or may, in his discretion, set the questions for hearing and take such further evidence as he deems necessary. The Commissioner or his special deputy shall use his best judgment as to when adjournment of a hearing shall be granted in order to secure all the evidence which is necessary. If the employer or his representative fails to appear at

the hearing, the contribution rate as originally determined, or the charging of benefits as originally made, as the case may be, will become final unless the employer within ten (10) days appears and shows good cause for his former non-appearance, in which latter event the Commissioner or his special deputy shall reschedule the hearing.

17.04. Appearances

Any individual may appear for himself in any proceeding before the Commissioner or his special deputy. Any partnership may be represented by any of its members and any corporation by any of its officers or officials. Any employer may appear by any attorney at law admitted to practice before a court of record of this state or of any state or territory of the United States or by an auditor or an accountant in charge of the books of such employer.

17.05. Subpoenas

Subpoenas to compel the attendance of witnesses and the production of records for any hearing on the chargeability of benefits, unless directed to issue by the Commissioner or his special deputy, shall be issued by the Commissioner or his special deputy only upon a showing of a necessity therefore by the employer or his representative.

17.06. Supplying Information

Orders for supplying information from the state agency to an employer or his representative, to the extent necessary for the proper presentation of his case, shall issue only upon application therefore. All applications for information from the records of the state agency shall state, as nearly as possible, the nature of the information desired.

17.07. Determinations

After the conclusion of a hearing, the Commissioner or his special deputy shall prepare tentative findings of fact and conclusions of law and deliver the same to the employer or mail them to the employer at his last known address. The employer shall then be given opportunity within a period of ten (10) days after the delivery or mailing of such tentative findings and conclusions, to present arguments, written or oral, at the discretion of the Commissioner or his special deputy, on such findings and conclusions. As soon thereafter as practicable the Commissioner or special deputy shall announce his findings of fact and determination. Both the findings of fact and the determination shall be in writing and shall be signed by the Commissioner or special deputy who presided at the hearing. A copy of the determination shall be mailed to the employer at his last known address.

Section 18. Benefits Erroneously Received

18.01. Whenever it is found that a claimant has received benefits erroneously and has been charged with an overpayment, no further cash payment of benefits shall be made to such a claimant until the total amount of overpayment has been reimbursed or otherwise liquidated to the satisfaction of the Commissioner. Any benefits which may become due any individual against whom an erroneous payment is outstanding shall be first used to reduce the amount of the erroneous payment.

Section 19. Payment of Benefits to Interstate Claimants

The following regulation shall govern the West Virginia **Department** Division of Employment Security in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

19.01. Definitions

As used in this regulation, unless the context clearly requires otherwise:

(A) "Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(B) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the West Virginia **Department** Division of Employment Security finds that this exclusion would create undue hardship on such claimants in specified areas.

(C) "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(D) "Agent state" means any state in which an individual files a claim for benefits from another state.

(E) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(F) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.

(G) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

19.02. Registration for Work

(A) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(B) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

(C) The interstate claimant shall receive the same placement services as intrastate claimants in the agent state.

19.03. Benefit Rights of Interstate Claimants

(A) If a claimant files a claim against any state and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(B) The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953.

19.04. Claims for Benefits

(A) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent liable state. **Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.**

(B) Claims shall be filed in accordance with the agent state regulations for intrastate claims in local employment offices, or at any itinerant point, or by mail.

(a) With respect to claims for weeks of unemployment in which the individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more

than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(b) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

19.05. Determinations of Claims

(A) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(B) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

19.06. Appellate Procedure

(A) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(B) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

19.07. Extension of Interstate Benefit Payments to include Claims Taken in and for Canada

(A) This regulation shall apply in all its provisions to claims taken in and for Canada.

Section 20. Combining Wage Credits Under the Interstate Arrangement for Combining Employment and Wages.

The following regulation shall govern the West Virginia **Department** Division of Employment Security in its administrative cooperation with other states subscribing to the Interstate Arrangement for Combining Employment and Wages. The terms "paying state" and "transferring state" used herein shall apply to this state where appropriate.

20.01. Definitions.

(A) STATE

State includes all the states of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(B) STATE AGENCY

The agency which administers the unemployment compensation law of a state.

(C) COMBINED WAGE CLAIM

A claim filed under this arrangement.

(D) COMBINED WAGE CLAIMANT

A claimant who has covered wages under the Unemployment Compensation Law of more than one state and who has filed a claim under this arrangement.

(E) PAYING STATE

1. The paying state is the state in which a combined wage claimant files a combined wage claim, **provided he (a) is qualified** if the claimant qualifies for unemployment benefits in that state **or (b) is not qualified in any State** on the basis of combined employment and wages.

2. If the state in which a **Combined-Wage Claim is filed** combined wage claimant files a combined wage claim is not the paying state under the criterion set forth **under "1" above,** in subparagraph (1) of this subsection, then the **Paying State** paying state shall be that state where the **Combined Wage Claimant** combined wage claimant was last employed in covered employment among the states in which **he** the claimant qualifies for unemployment benefits on the basis of combined employment and wages.

(F) TRANSFERRING STATE

A state in which a combined wage claimant had covered employment and wages in the base period of a paying state and which transfers such employment and wages

to the paying state for its use in determining the benefit rights of such claimant under its law.

(G) EMPLOYMENT AND WAGES

"Employment" refers to all services which are covered under the Unemployment Compensation Law of a state, whether expressed in terms of weeks of work or otherwise. "Wages" refers to all remuneration for such employment.

(H) SECRETARY

The Secretary of Labor of the United States

(I) BASE PERIOD AND BENEFIT YEAR

The base period and benefit year applicable under the Unemployment Compensation Law of the paying state.

20.02. Filing of Claims

A new claim filed under the Interstate Arrangement for Combining Employment and Wages shall be filed as an intrastate or interstate claim against the paying state in the same manner as by an individual filing a claim

under the law of the paying state. Continued claims shall be filed against this paying state as intrastate or interstate claims, as appropriate.

20.03. Liability for Payment of Benefits

Benefits under the Interstate Arrangement for Combining Employment and Wages shall be paid to the combined wage claimant from the Unemployment Compensation fund of the paying state, in accordance with the benefit formula of the paying state, to the same extent as if all transferred wages were wages under the law of the paying state, even if such claimant has no earnings in covered employment in that state.

20.04. Notices of Determinations

The paying state shall give to the combined wage claimant a notice of each of its determinations on his combined wage claim that he is required to receive under the Secretary's Claim Determinations Standard and the contents of such notice shall meet such Standard. When the claimant is filing his combined wage claim in a state other than the paying state, the paying state shall send a copy of each such notice to the local office in which the claimant filed such claims.

20.05. Redeterminations

Redeterminations may be made by the paying state in accordance with its law based on additional or corrected information received from any source, including a transferring state, except that such information shall not be used as a basis for changing the paying state if benefits have been paid under the **initial determination** combined wage claim.

20.06. Appeals

1. Except as provided in paragraph 3 below, where claimant files his combined wage claim in paying state, any protest, request for redetermination or appeal shall be in accordance with the law of such state.

2. Where the claimant files his combined wage claim in a state other than the paying state, or under the circumstances described in paragraph 3 below, any protest, request for redetermination, or appeal shall be in accordance with the Interstate Benefit Payment Plan.

3. To the extent that any protest, request for redetermination or appeal involves a dispute as to the coverage of the employing unit or services in a transferring state or otherwise involves the amount of employment and wages subject to transfer, the protest, request for redetermination or appeal shall be decided by the transferring state in accordance with its law.

20.07. Recovery of Prior Overpayments

If there is an overpayment outstanding in a transferring state, the overpayment shall be deducted from any benefits the paying state would otherwise pay to the claimant on his combined wage claim. The paying state shall transmit the amount deducted to the transferring state or credit the deduction against the transferring state's required reimbursement under this arrangement. This paragraph shall apply to overpayments only if the transferring state certifies to the paying state that the determination of overpayment was made within three (3) years before the combined wage claim was filed and that repayment by the claimant is legally required and enforceable against him under the law of the transferring state.

20.08. Benefit Payments and Charges

Each charge to a transferring state in connection with a combined wage claim payment shall bear the same ratio to the total benefits paid to the combined wage claimant by the paying state as his wages transferred by the transferring state bear to the total wages used in such determination. **The computation of such ratio shall be to the nearest full percentage point.** Each such ratio shall be computed as a percentage to three or more decimal places (e.g., 27.374%).

20.09. Forms and Reports

Each participating state shall, with respect to a combined wage

claimant, in utilizing forms approved by the Interstate Benefit Payment Committee:

(A) When acting as the paying state, promptly request the transfer of wages from all the states in which the claimant work history appears to indicate wages earned in the base period of the paying state. Total wages in all states that were paid in the base period of the paying state shall be requested for transfer even though not all are needed for the maximum benefit entitlement.

This transfer request shall show the name, address, and social security account number of the claimant; the effective date of the combined wage claim; the beginning and ending dates of the paying state's base period; the name, address, place of employment and periods worked for each employer listed by the claimant; and the name of the transferring state.

(B) When acting as potential transferring state, report promptly on request of potential paying state the following:

(a) the claimant's weekly and maximum benefit amounts if the claimant would be monetarily eligible for a claim against that state with the same effective date as the combined wage claim; and

(b) all wages earned in the transferring state that fall within the base period of the paying state, including wages which may not be available for transfer for benefit purposes.

(C) When acting as the paying state, after making an initial determination on a combined wage claim, furnish each transferring state a copy of such determination and furnish the claimant a copy of its initial determination.

(D) When acting as the paying state, notify each transferring state as soon as possible of the charges made against that state during the preceding calendar quarter for benefits paid to combined wage claimants.

20.10. Reimbursement of Paying State

A transferring state shall, as soon as practicable after receipt of a quarterly statement as set forth in Section 20.09(D) hereof of these regulations, reimburse the paying state accordingly.

20.11. Termination of Combining Wages

Combining of wages shall terminate upon the termination of the benefit year in the paying state or at such time as redetermination of benefit rights becomes necessary under the law of the paying state.

20.12. Relation to Interstate Benefit Payment Procedures

Whenever the Interstate Arrangement for Combining Employment and Wages applies, it shall supersede any inconsistent provisions of the Interstate Benefit Payment Plan and the Regulations thereunder.

20.13. Charging of Benefits Based on Combined Wage Credits for Experience Rating Purposes

Benefits paid by another participating state based partly on wage credits earned in West Virginia shall be deemed to be "paid" for experience rating purposes under Article 5, Section 7(2), as of the date when actually charged for such purposes, or as of the date when reimbursed to the paying state, whichever date is earlier.

20.14. Effective Date of Interstate Arrangement for Combining Employment and Wages

The Interstate Arrangement for Combining Employment and Wages applies only to new claims filed on and after January 1, 1972.

Section 21. Interstate Reciprocal Coverage Arrangement

The following regulations shall govern the West Virginia **Department** Division of Employment Security in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as "the Arrangement."

21.01. Definitions. As used in this regulation, unless the context clearly indicates otherwise:

(A) "Jurisdiction" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or with respect to the Federal Government, the coverage of any Federal Unemployment Compensation Law;

(B) "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;

(C) "Agency" means any officer, board, commission, or other authority charged with the administration of the Unemployment Compensation Law of a participating jurisdiction;

(D) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this regulation is sent for its approval and "interested agency" means the agency of such jurisdiction;

(E) "Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

21.02. Submission and Approval of Coverage Elections under the
Interstate Reciprocal Coverage Arrangement

(A) Any employing unit may file an election, on Form RC-1, to cover under the law of a single participating jurisdiction all of the services performed for him by any individual who customarily works for him in more than one participating jurisdiction.

Such an election may be filed, with respect to an individual, with any participating jurisdiction in which (a) any part of the individual's services are performed; (b) the individual has his residence; or (c) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(B) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(C) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reason therefore.

(D) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.

An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(E) In case any such election is approved only in part, or is

disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

21.03. Effective Period of Elections

(A) Commencement. An election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(B) Termination

(a) The application of an election to any individual under this regulation shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall

be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

(b) Except as provided in sub-paragraph (a), each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(c) Whenever an election under this regulation ceases to apply to any individual, under sub-paragraph (a) or (b), the electing unit shall notify the affected individual accordingly.

21.04. Reports and Notices by the Electing Unit

(A) The electing unit shall promptly notify each individual affected by its approved election on the Form RC-2 supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(B) Whenever an individual covered by an election under this regulation is separated from his employment, the electing unit shall again

notify him, forthwith, as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

(C) The electing unit shall immediately report to the elected jurisdiction any changes which occur in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

21.05. Approval of Reciprocal Coverage Elections

The West Virginia **Department** Division of Employment Security hereby delegates to its Commissioner authority to approve or disapprove reciprocal coverage elections in accordance with this regulation.

Section 22. Destruction of Records

The following regulation is hereby approved to govern the destruction of records, reports, transcripts, computer maintained records, or reproductions thereof, and other papers of the **Department** Division of Employment Security, as

provided in the West Virginia Unemployment Compensation Law, Article 10, Section 4.

22.01. Claim folders and contents, including Initial Claims, Initial Claim Determination and Deputy's Decisions, Base Period Wage Transcripts, Low Earnings Reports, Deputy's Decisions, correspondence, and other related documents, may be declared obsolete and destroyed at the expiration of three (3) years after the benefit year ending date of each claim; provided, however, that no record of a claim shall be destroyed until all matters pertaining thereto have been fully and finally completed.

22.02. Employer's Quarterly Wage Reports may be destroyed five (5) years after the quarter to which they relate.

22.03. Continued Claims and Pay Order Cards may be destroyed **two (2)** three (3) years after the end of the benefit year in which the continued claims were filed **provided, however, that no Continued Claim and Pay Order Card shall be destroyed until a photographic film or the statutory equivalent thereof has been made.**

22.04. Benefit Payment Checks may be destroyed at any time after the expiration of two (2) years and sixty (60) days after the date of each check **provided, however, that no such check shall be destroyed until a photographic film or the statutory equivalent thereof has been made.**

22.05. Employer Reports and Correspondence may be destroyed after five (5) years have elapsed from the end of the calendar year to which they relate; provided, however, that **Employer Contribution Reports shall not be destroyed until a photographic film or the statutory equivalent thereof has been made.** all audit issues have been resolved.

22.06. Carbon copies and other forms of duplicate copies, incidental records, reports, correspondence, and other papers of minor or incidental importance, may be destroyed upon order from the Commissioner.

22.07. Computer maintained records including magnetic tapes, disk files or input documents containing initial claims, initial claim determinations, low earnings, deputy's decisions, continued claims, payorders, benefit checks may be destroyed at the expiration of three (3) years after the end of the benefit year; provided that no record of claim is destroyed until all matters pertaining to the claim have been fully and finally completed.

22.08. Computer maintained records including magnetic tapes, disk files or input documents containing employee wages (quarterly wage reports) may be purged and destroyed five (5) years after the quarter to which they relate.

Section 23. Establishment, Maintenance, and Dissolution of Joint Accounts

23.01. Two or more employers, upon written request submitted on an application form prescribed by the Commissioner, may combine their accounts into a joint account for one calendar year; Provided, however, that such application must be made **on or before the 15th day of September preceding the calendar year in which the joint account is to become effective** annually within thirty days of the date Form WVUC-MR-7, Notice of Contribution Rate, or its substitute is mailed to employers. Provided, further, that the account of each such employer must have been chargeable with benefit payments for the 36 consecutive calendar months immediately preceding **computation date in the year immediately preceding** the first year in which the rate based on combined experience becomes effective. A joint account will become effective **only upon January 1 of any year** upon approval of the application by the Commissioner. The Commissioner may grant a thirty-day extension for the filing of an application for a joint account; provided that such request must be post-marked by the last date on which to file the application.

23.02. The Department shall maintain a separate account for each employer participating in a joint account. To compute the joint rate applicable to all participating employers, the records of all such employers shall be combined and the computed rate shall apply to all participating employers for the entire calendar year.

23.03. A participating employer may withdraw upon written application therefore, effective on the first day of January of any year provided that the application for withdrawal be made on **or before January 31** within thirty days

of notification of the computed rate applicable to the joint account. of the year in which the withdrawal is effective. A joint account may be dissolved upon submission of such application on the part of all participating employers. Future contribution rates of employers who withdraw from joint accounts, or who have participated in a joint account which is dissolved, shall be computed on the basis of the experience of each such employer. When an employer withdraws from a joint account, employers remaining in the joint account will receive rates for future years computed without the experience of the withdrawing member.

Section 24. Secrecy of Tax Information

24.01. Definitions

For the purposes of this section, the following terms shall have these meanings:

(A) "Return" means any tax or information return, declaration, or estimated tax, or claim for refund required by, or provided for or permitted under the provisions of the Internal Revenue Code which is filed with the Internal Revenue Service by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(B) "Return information" means a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments, or tax payments, whether the tax payer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the Commissioner with respect to a return or with respect to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, additions to tax, penalty, interest, fine or other imposition or offense and any part of any written determination or any background information relating to such written determination.

(C) "Tax administration" means:

1. The administration, management, conduct, direction, and supervision of the execution and application of the revenue laws, or related statutes of the state, and

2. The development and formulation of state tax policy relating to existing or proposed Internal Revenue laws, or related statutes, or the state, and

3. Includes assessment, collection, enforcement, litigation, and statistical gathering functions under such laws or statutes.

24.02. General Rule

Tax returns and tax return information are confidential and cannot be disclosed except as authorized by law and by the Agreement on Coordination of Tax Administration between the Department Division of Employment Security (hereinafter called the department Division) and the Internal Revenue Service. Tax return information may be disclosed:

(A) When required in an official investigation by the Commissioner into the amount of tax due;

(B) When required in any proceeding instituted by the Commissioner before a court of competent jurisdiction to collect or ascertain the amount of tax due;

(C) Under a reciprocity agreement with the proper officer of the United States, or the District of Columbia, or any other state, or any political subdivision of this state, provided that such information is given for a proper tax administration purpose and that such other jurisdiction has adopted adequate provisions of law to meet the requirements of Internal Revenue Code 6103(p)(8); or

(D) In the publication or release of statistics so classified to prevent identification of the taxpayer and to prevent identification of particular reports and the items thereof.

24.03. Disclosure of Returns and Return Information to Designee of Taxpayer

The Commissioner may disclose a return or return information to a person designated by the taxpayer. A request for (or consent to) disclosure must be in a written document pertaining solely to the authorized disclosure. This document must be signed and dated by the taxpayer who filed the return, or to whom the return information relates. The taxpayer must also indicate in the written document:

- (A) The taxpayer's identity information;
- (B) The identity of the person to whom the disclosure is to be made;
- (C) The type of return (or specific portion of the return) or return information (and the particular data) that is to be disclosed;
- (D) The taxable year or period covered by the return or return information; and

(E) Sufficient facts underlying the request for information or assistance to enable the **department** Division to determine the nature and extent of the information or assistance requested and the returns or return information to be disclosed in order to comply with the taxpayer's request.

A return or return information will be disclosed to the taxpayer's designee as provided by this subsection only to the extent considered necessary by the **department** Division to comply with the taxpayer's request for information or assistance.

KEN RECHLER
Secretary of State

MARY P RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

RECEIVED
EMPLOYMENT SECURITY

MAR 23 1992
COMMISSIONER

RECEIVED
EMPLOYMENT SECURITY

MAR 23 1992

LEGAL DIVISION

TO: Andy Richardson

AGENCY: Employment Security

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: March 19, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: Regulations of the Commissioner of Employment Security

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Deanna M. Sawyer

TITLE OF PERSON SIGNING: Supervisor - Legal Section

DATE: 5-22-92