Sunshine Act Meetings

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 27, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Voluntary Standards Policy Regulation

The Commission will consider the proposed amendments to the Commission's regulations 16 CFR 1031 and 1032 concerning staff participation in voluntary standards activities.

2. Preliminary 1990 Budget

The Commission will consider issues related to the Preliminary Budget for Fiscal Year 1990.

Closed to the Public

3. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88–16750 Filed 7–21–88; 2:40 pm]

BILLING CODE 6355–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 27103, Monday, July 18, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Tuesday, July 26, 1988.

CHANGE IN THE MEETING:

Open Session

The items listed below have been added to the agenda:

- *Proposed Recordkeeping Modifications to 29 CFR Part 1602, "Reports and Records," and 29 CFR Part 1627, "Records to be Made or Kept Relating to Age"*
- *Report on Pre-Complaint Counseling and Complaint Processing by Federal Agencies for Fiscal Year 1987*

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: July 20, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued July 20, 1988.

[FR Doc. 88–16729 Filed 7–21–88; 2:40 pm]

BILLING CODE 6750–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 26367, Tuesday, July 12, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, July 19, 1988.

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: July 19, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued July 19, 1988.

[FR Doc. 88–16812 Filed 7–21–88; 3:59 pm]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on July 20, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, July 27, 1988.

CHANGES IN THE MEETING: The open meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: July 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–16734 Filed 7–21–88; 2:40 pm]

BILLING CODE 6210–01–M

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 11, 1988.

PLACE: Commission Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Postal Rate Commission Budget for Fiscal Year 1989
2. Election of Vice Chairman
3. Revision of the Commission's Personnel Awards Program

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20286–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 88–16719 Filed 7–21–88; 2:40 pm]

BILLING CODE 7715–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, August 2, 1988, at the Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 1, 1988, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

August 2, 1988—8:00 a.m. (Open)

1. Minutes of the Previous Meeting, July 7–8, 1988.
2. Remarks of the Postmaster General.

3. Quarterly Report on Financial Performance. (Mr. Coppie)
4. Quarterly Report on Service Performance. (Mr. Coughlin)
5. Review of Technology Resource Management Department. (Mr. Hunter)
6. Capital Investments. (Mr. Smith)
   a. Worcester, Massachusetts, Mail Processing Center.
   b. Minneapolis, Minnesota, General Mail Facility.
   c. Oxnard, California, Mail Handling Annex.
7. Tentative Agenda for September 12–13, 1988, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 88–16730 Filed 7–21–88; 2:40 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Occupational Exposure to Formaldehyde; Resubmission of Hazard Communication Provisions for Clearance Under the Paperwork Reduction Act

Correction

In notice document 88-15535 beginning on page 26329 in the issue of Tuesday, July 12, 1988, make the following corrections:

1. On page 26332, in the first column, in the first complete paragraph, the 13th through 20th lines should read "Moreover, in regard to areas in which employees are exposed to toxic substances or harmful physical agents, the OSH Act provides that the Secretary of Labor shall issue regulations requiring employers to keep records of employee exposures (29 U.S.C. 657(c))."

2. On the same page, in the second column, in the second complete paragraph, in the third line, "Formaldehyde" was misspelled.

3. On page 26334, in the first column, under "B. Method Used to Estimate Cost of Burden to Respondents", in the sixth line, "estimated" should read "estimates".

4. On page 26336, in the second column, in the last paragraph, in the fourth line, "no" should read "on".

5. On page 26337, in the second column, in the 14th line, "is" should read "in".

6. On the same page, in the same column, in the first complete paragraph, in the first line, "Standard" should read "Standard's".

7. On the same page, in the same column, in the last paragraph, in the last line, between "define" and "a" insert "when".

8. On the same page, in the same column, in footnote 4, in the eighth line, "relevant" was misspelled.

9. On the same page, in the third column, in the last paragraph, in the fourth line, "resolve" should read "resolved".

10. On page 26338, in the first column, in the 15th line, "and" should read "an".

11. On the same page, in the same column, in the second complete paragraph, the last sentence should read "Therefore it would not have been possible to submit the Paperwork Clearance package until this review was complete."

12. On the same page, in the second column, in the third line, between "pressure" and "to" insert "to promulgate the standard, should not be allowed in essence".

13. On the same page, in the same column, under "*Hazard Communication*", in the ninth line, "CF" should read "CFR".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Amendments to Specialty Steel Import Relief

Correction

In notice document 88-26951 beginning on page 44666 in the issue of Friday, November 20, 1987, make the following corrections:

1. On page 44667, in the first column, in the second complete paragraph, in the fourth line from the bottom remove the text beginning with "and not less than 0.20 percent nor more than 0.030 percent sulphur;".

2. On the same page, in the third column, in the first complete paragraph, in the sixth line, "terms" should read "items".

BILLING CODE 1505-01-D

federal register

Monday
July 25, 1988

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 615

Federal-State Unemployment Compensation Program; Revision of Extended Benefit Program Regulations; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 615

Federal-State Unemployment Compensation Program; Revision of Extended Benefit Program Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Extended Benefit Program is a part of the Federal-State Unemployment Compensation Program, and takes effect during periods of high unemployment to furnish up to 13 weeks of additional benefits to individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. The final regulations add new text and revise the regulations for the Extended Benefit Program to reflect changes in the law regarding eligibility for Extended Benefits and reimbursement of the Federal share of Extended Benefits. The final regulations clarify some of those requirements and the timing of them, and correct obsolete language in several places. Last, the final regulations extend the present "freeze" on the indicator rates for insured unemployment to cover all determinations of insured unemployment rates, and specify a time period for correcting errors in the determination of "on," "off," or "no change" indicator rates of insured unemployment. The final regulations include changes and improvements set forth in the published proposal in addition to changes made in response to comments from the States. The proposal was published in the **Federal Register** on October 24, 1986. A notice of extending the closing date for comments to April 20, 1987, was published in the **Federal Register** on April 3, 1987.

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535–0600 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Part 615, Chapter V, Title 20 of the Code of Federal Regulations implements the Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91–373) (the "EUCA"), 26 U.S.C. 3304 note. That Act prescribes provisions required to be included in State unemployment compensation laws. It is made a requirement for State laws by section 3304(a)(11) of the Internal Revenue Code of 1986. The Act was amended in 1980, 1981, 1982, and 1983 to change the requirements for State laws in a number of ways.

1980 Amendments to EUCA

Section 416 of Pub. L. 96–364 added section 202(c) to the EUCA, and bars more than 2 weeks of Extended Benefit payments to individuals under the Interstate Benefit Payment Plan if they file claims in a State where an Extended Benefit Period is not in effect. This amendment was effective on June 1, 1981, in most States.

Section 1022 of Pub. L. 96–499 amended section 204(a)(2) of the EUCA to add a new subparagraph (B) which limits Federal reimbursement of benefits to a State which does not require a waiting period for regular benefits. Section 615.14(c)(3) establishes the effective dates under varying State circumstances. This amendment affects a State's entitlement to Federal sharing in the costs of regular compensation and Extended Benefits, but is not a requirement for State laws.

Section 1024 of Pub. L. 96–499 added sections 202(a) (3), (4) and (5) of the EUCA. Paragraph (3) requires amendment of State laws to include specific provisions defining suitable work as any work which is within an individual's capabilities, except that if the individual's prospects of obtaining work in his/her customary occupation in a reasonably short period are determined to be good, then suitable work is determined under the provisions in State law applicable to claimants for regular benefits; and includes a specific disqualification for failure to accept suitable work, or to apply for suitable work when referred by a State employment office, or to actively search for work. Paragraph (4) requires that disqualifications for voluntarily leaving employment, discharge for misconduct and refusal of suitable work shall not be considered terminated for the purpose of qualifying for Extended Benefits except by employment subsequent to the disqualifications. Paragraph (5) (redesignated as (6) in the 1981 amendments, which added a new paragraph (5)) prohibits Federal sharing in regular benefit costs if the State does not apply the rules of paragraphs (3) and (4) in paying such benefits. Paragraphs (3) and (4) are requirements for State laws; paragraph (5), like section 204(a)(2), is not a requirement for State laws. The requirements of paragraph 4 took effect in all States for weeks of unemployment beginning after March 31, 1981. The requirements in paragraph 3 took effect in the States for weeks of unemployment beginning after October 31, 1981, except for any State in which the State legislature did not meet in 1981, section 202(a)(3) shall apply to weeks of unemployment beginning after October 1, 1982.

1981 Amendments to EUCA

Sections 2401 through 2404 and sections 2505 and 2506 of Pub. L. 97–35 made several changes in the conditions under which Extended Benefits trigger on or off by eliminating the National trigger, changing the standard State trigger from 4.0 percent to 5.0 percent, the optional State trigger from 5.0 percent to 6.0 percent, and changing the definition of the "rate of insured unemployment" by eliminating claims for Extended Benefits and additional compensation. Other amendments prohibit paying benefits to individuals with little qualifying employment, and make changes to tie into the amendments to the Trade Act of 1974. Changes in §§ 615.2, 615.4, 615.7, 615.8, 615.12, 615.13, and 615.14 reflect those amendments.

1982 Amendment to EUCA

Section 191 of Pub. L. 97–248 amended section 204(a)(2) to add a new subparagraph (D), which provides that States which do not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount shall not be entitled to be reimbursed for the Federal 50 percent share on the amount by which sharable regular and sharable extended compensation paid exceed the lower dollar amount. This amendment became effective for benefits paid for eligibility periods beginning on or after October 1, 1983, with a grace period for States that require legislation to provide for rounding down.

1983 Amendment to EUCA

Section 522 of Pub. L. 98–21 amended section 202(a)(3)(A)(ii) to provide exemptions to the requirement that claimants actively engage in seeking work: (1) if the individual is serving on jury duty under specified circumstances, and (2) if the individual is hospitalized for an emergency or life-threatening condition. A State may apply these exemptions to claimants for Extended Benefits only if the exemptions also apply to claimants for regular benefits. Sections 615.2(o) (11) and (12) define the terms "jury duty" and "hospitalized for treatment of an emergency or life-threatening condition." The amendment

to section 202(a)(3)(A)(ii) became effective on enactment, April 20, 1983.

1987 Amendment to EUCA

Section 9151 of Pub. L. 100–203 amended the date in section 202(a)(6) for purposes of determining the Federal share of weeks of unemployment beginnning after March 31, 1981. Section 9151 of Pub. L. 100–203 changed the original effective date of section 202(a)(3) to weeks of unemployment beginning after October 31, 1981. If a State's legislature did not meet in 1981, section 202(a)(3), EUCA would apply to weeks of unemployment beginning after October 31, 1982.

Invitation for Comments

The proposal to revise the Extended Benefits (EB) regulations was published in the **Federal Register** on October 24, 1986 (51 FR 37741). Comments on the proposed revision of Part 615 were originally solicited through November 24, 1986. On April 3, 1987 (52 FR 10774) a notice was published in the **Federal Register** extending the closing date for comments to April 20, 1987.

The Department of Labor received timely written responses to the proposal from 15 State Employment Security Agencies (SESAs) and the Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations. The SESAs that commented on the proposal were: The Arizona Department of Economic Security, the California Employment Development Department, the Illinois Department of Employment Security, the Michigan Employment Security Commission, the Nevada Employment Security Department, the New Jersey Department of Labor, the New York Department of Labor, the Ohio Bureau of Employment Services, the Oregon Employment Division of the Department of Human Resources, the Pennsylvania Department of Labor and Industry, Office of Employment Security, the Tennessee Department of Employment Security, the Texas Employment Commission, the Vermont Department for Employment and Training, the West Virginia Department of Employment Security, and the Wisconsin Department of Industry, Labor and Human Relations.

The Department gave careful consideration to all comments and suggested changes received before drafting the final regulations. This document contains the final revised regulations for Part 615. Following is a summary of the comments received and the Department's responses in order of section.

Section-by-Section Analysis and Response to Comments Received

General

A SESA commented that it believed the regulations were of sufficient importance to warrant a public hearing. The Secretary agrees on the importance of these regulations. However, the Assistant Secretary has determined that the process of publishing the proposed rule in the **Federal Register**, in accordance with 5 U.S.C. 553, was sufficient to satisfy the statutory requirement for public participation in this rulemaking. The notice in the **Federal Register** gave interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments, allowed more than 30 days for such comments, and was followed by the Department's careful consideration of the written comments received. A public hearing for these regulations is not required by statute. For these reasons, the Department will schedule no public hearing.

A SESA commented that some States are currently pursuing administrative relief from findings of the Inspector General, which, it believes, involve issues of interpretation of State and Federal law at the same time that State program decisions were made. It stated that to now deny payment of the Federal share of Extended Benefits, under the circumstances set forth in § 615.14(b) of these regulations, would be impermissably retroactive rulemaking.

These regulations are not retroactive in application but rather implement the provisions of the EUCA amendments as of their effective dates. Accordingly, each of the amendments addressed in these revised regulations, including the changes in § 615.14(b), is treated as having become effective on the effective dates specified in the amending acts. The Department has been carrying out the law as amended. The regulations affirm this and now furnish a regulatory basis for the positions that have been taken in implementing the statutory amendments.

The SESA further commented that five years is too lengthy a period between statutory enactment and rulemaking and after five years of "ever-changing directives," the proposed rules no longer provide timely clarification.

These comments on the timing of the publication of the proposed rules are understandable; however, the EUCA was amended in 1980, 1981, 1982 and 1983 and each amendment required revisions and additions to the proposed rules. Part of the delay in the publication of these regulations is inherent in the regulatory process. This process is governed by the Administrative Procedure Act, the Regulatory Flexibility Act, Executive Orders 12067 and 12291, and the Paperwork Reduction Act. These directives also require the Office of Management and Budget to review regulatory proposals. Although these processes concededly do not explain away all of the delays encountered, and there have been changes in guidance furnished to the States, the last substantive changes were reflected in the Notice of Proposed Rulemaking published on October 24, 1986. The States were, therefore, timely notified of each amendment and each change in guidance.

The SESA listed several examples of "ever-changing directives" from ETA which, it stated, placed SESAs in the position of constantly modifying administrative policies. It noted that Unemployment Insurance Program Letter (UIPL) 14–81, issued February 2, 1981, stated that if a claimant was unavailable for work in any week because of illness, disability, death in the family, or jury duty, the claimant would not be excused from meeting the actively seeking work requirement of EUCA section 202(a)(3). The SESA believed that this was inconsistent with the explanation for the definition of "weeks of unemployment" in § 615.2(n)(2) of the regulations, which stated Congress must not have intended EUCA section 202(a)(3) to disqualify a claimant who was not claiming benefits for a given week due to illness.

The statements in the UIPL and the regulations are not inconsistent. It is still true that, except as modified by the 1983 amendments, no excuse will suffice for failing to meet the actively seeking work requirement of section 202(a)(3)(A), EUCA. It also remains true that the requirement applies only to weeks for which a claim is filed for benefits. This interpretation avoids the extreme result of requiring the disqualification to apply to every week of unemployment regardless of whether a claim is filed. The 1983 amendment to EUCA section 202(a)(3)(A) softens the actively seeking work requirement, but does not change the basic approach the Department takes of applying the disqualification only with respect to weeks for which a claim is filed. The Department's guidance to the States on these points has remained unchanged, except as required by the 1983 amendments. No change is made in the regulations.

The SESA further commented that UIPL 14–81, Change 2, issued September 8, 1981, stated that a maximum of 4 weeks for a claimant to obtain work

within the individual's customary occupation would constitute "a reasonably short period" under EUCA section 202(a)(3)(C). The commenter noted that under the proposed regulations, § 615.8(d)(1), the determination of the length of this "reasonably shortperiod" is now left to the applicable State law.

This change represents a deferral to the States; the States were timely notified when this change was made. The Department prefers to leave matters to the States where it can do so under the law. In this instance the Department decided, after reconsidering the matter, that this was a matter better left to the States. No change is made in the regulation.

This SESA also commented that § 615.2(o)(7) of the proposed regulations, defining the phrase "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii) of the Act, changes the UIPL instructions. The SESA states that this change "would substantively amend [the] statutory interpretation after years of denial of claims based on [the] more restrictive UIPL instructions."

The change made by the proposed regulations defining the phrase, "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii) of the Act defers to the States. The Department acknowledges that it has changed its interpretation of the phrase, "Provisions of applicable State law," because the Department, as explained above, prefers to leave matters to the States where it can do so under the law. Upon reconsideration, the Department has decided that it was proper to defer to the States here. No change is made in the regulation.

The SESA also commented that misleading legal conclusions are drawn in the "**SUMMARY**," "**SUPPLEMENTARY INFORMATION**," and "1980 Amendments to EUCA" sections. With respect to the "**SUMMARY**", it stated that there had been no regulations on the new paragraphs added to section 202(a), EUCA, enacted by Pub. L. 96–499; therefore, there are no regulations on these new paragraphs to be revised by the Proposed Rules.

The proposed rule added new text in addition to amending existing text; both kinds of changes come under the definition of a "revision" of the regulations. This omission of a reference to the added text was not an attempt to mislead, but is noted in the final regulations. The changes proposed were carefully noted in the preamble and fully set forth in the regulatory text of the Notice of Proposed Rulemaking.

The SESA also commented that the "Supplementary Information" and the "1980 Amendments to EUCA" section are misleading because the amendments in Pub. L. 96–499 that added new paragraphs (3), (4), and (5) to EUCA section 202(a) did not require States to change State law. The SESA commented that Congress clearly intended that State law be changed at section 1022(a) of Pub. L. 96–499, which concerns the waiting week and that no such language is found in the statute concerning suitable work.

The Department used the word "required" in the Supplementary Information with respect to the amendments in Pub. L. 96–499 that added new paragraphs to section 202(a) of EUCA, because it is bound by the use of the word "required" in section 3304(c) of the Internal Revenue Code of 1986 as follows:

> On October 31 of any taxable year, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as provided under subsection (a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.

Paragraphs (3) and (4) were correctly stated to be new requirements for Extended Benefits, as are other provisions of EUCA sections 202 and 203 relating to eligibility requirements for Extended Benefits. Paragraph (5) was correctly noted as not being a requirement for State laws, but solely a requirement for Federal sharing in the costs of regular benefits. The absence of identical language in the suitable work provisions is not determinative. Therefore, "required" is not deleted from the **SUPPLEMENTARY INFORMATION** in the final regulations, and no change is made in the final regulations.

The SESA also commented that the Proposed Rules should be classified as major rules and a regulatory impact analysis must be prepared.

The Secretary of Labor has determined, with the concurrence of the Office of Management and Budget, that the proposed rules are not major rules, for the reasons stated in the document.

Section 615.2(o)(1) "Employed"

The proposed rule at § 615.2(o)(1) defines "employed" for purposes of section 202(a)(3) of EUCA. A SESA, that did not suggest alternate language, commented that this definition does not meet the expressed goal of excluding "such neighborly exchanges as babysitting."

The Department's definition of "employed" was written to prevent the purging of a disqualification by activity that is not bona fide employment or by services not customarily performed under a contract of hire for wages. The definition at § 615.2(o)(1) thus provides that the definition of employment in State law applies. Therefore, a SESA should refer to State law for purposes of determining what "employed" means in applying the 4x4 disqualification and in determining what "employment" suffices under the EUCA section 202(a)(4) requirement. For these reasons, the definition of "employed" at § 615.2(o)(1) will remain unchanged in the final regulations.

Section 615.2(o)(4) "Reasonably short period"

The proposed rule at § 615.2(o)(4) defines a "reasonably short period", for purposes of section 202(a)(3)(C) of the Act, as the number of weeks specified by State law. A SESA commented that the regulation should explain whether a State's policy regarding a reasonably short period may be followed in the absence a State law provision which defines a reasonably short period.

This is a matter of interpretation of State law for State authorities to decide. This definition could be read, however, as requiring specificity in the State law, and this is not what is intended. In the final regulation, therefore, the word "specified" is deleted and the word "provided" is inserted in place thereof.

Section 615.2(o)(6) "And" as used in section 202(a)(3)(D)(ii), shall be interpreted to mean "or"

The proposed rule at 615.2(o)(6) defines "and" to mean "or" with respect to the provision that "Extended compensation shall not be denied * * * for failing to accept an offer of, or apply for, suitable work * * * if the position was not offered to such individual in writing and was not listed with the State employment service * * *." Three SESAs commented on the interpretation of "and" to mean "or" with one SESA asserting that this interpretation goes beyond the law and that a regulation cannot contradict the statute it implements. Another SESA suggested application of the more stringent suitable work definition in State laws for regular benefits to Extended Benefits claims and removal of the limitation on denials of Extended Benefits when an individual refuses to accept an offer of suitable work if the offer of work is not

made in writing and is not listed with the State employment service.

The Department originally construed "and" in section 202(a)(3)(D)(ii) of the Act in the conjunctive as requiring that both conditions be satisfied before imposing the disqualification. That is, an individual who refused an offer of otherwise suitable work could be denied extended benefits only if the offered work was both listed with the State employment service *and* offered in writing. However, early in 1981 the Department concluded that "and" must be construed as "or" in this instance, so that either an offer in writing or the listing with the employment service would suffice. This view is supported both by the explanation in Conference Report No. 96–1479: "(b)(1) Deny extended benefits to any individual who fails to accept any work that is offered in writing or is listed with the State employment service * * *." and the Senate Finance Committee Print 96–36.

It is apparent that the word "and" so construed provides for a more reasonable and rational requirement. In practice an offer of a job is rarely made in writing and it is unheard of to make an offer of a job prior to a referral. Therefore, it is unreasonable to expect or require an advance offer in writing, especially in the case of a referral. It is also obvious that requiring that the offer be in writing *and* listed with the employment service makes it more difficult to impose the disqualification under the EB "work test" than is the case under State law applicable to regular benefits. Congressional intent was to impose a more stringent requirement than provided under current State law disqualifications. Clearly that intent is not realized by construing the word "and" in the conjunctive and thereby requiring both of the conditions contained in subparagraph (D)(ii) be satisfied to justify imposition of the special disqualification.

In light of these considerations and to determine what action could legally be taken to achieve congressional intent, the Department examined the legislative history of this provision and pertinent court decisions to resolve the apparent conflict between the language in the report and the language of the statute. The Department determined that there is sufficient legal precedent in court decisions that the word "and" in a statute may indeed be construed as "or" (and vice versa) where that is necessary to carry out the legislative intent. Accordingly, based on the holdings in those court decisions, the thrust of the legislation, and the expressed legislative intent, the Department concluded that the word "and" must be construed as "or". Therefore a State law will be considered consistent with the requirements of subparagraph (D)(ii) only if it provides that a disqualification for failing to accept an offer of or apply for suitable work will be imposed if the job is either offered in writing or is listed with the State employment service, and, conversely, that the disqualification will not apply if the job is neither offered in writing nor listed with the State employment service.

The suggestion to apply the more stringent suitable work definitions in State laws for regular benefits to Extended Benefit claims and to "remove" the (D)(ii) provision from the regulations, is not acceptable because it would be contrary to sections 202(a) (2) and (3) of EUCA. Paragraph (2) of section 202(a) of EUCA provides:

> Except where inconsistent with the provisions of this title, the terms and conditions of State law which apply to claims for regular compensation * * * shall apply to claims for extended compensation * * *

Paragraph (3)(A) of section 202(a) of EUCA provides:

> Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period—
>
> (i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c)) * * *.

The applicability of the suitable work provisions of the EUCA is indicated by the phrase, "Notwithstanding the provisions of paragraph (2)", in paragraph (3)(A) of section 202(a) of the ACT. Thus paragraph (3)(A) specifically provides that, without prevention by or obstruction from paragraph (2), the suitable work and active search for work provisions in the EUCA shall apply to claims for extended compensation. For these reasons, no change is made in the final regulations.

Section 615.2(o)(8) Systematic and Sustained Effort (to obtain work)

The proposed rule at § 615.2(o)(8) defines the term "systematic and sustained effort" set forth in section 202(a)(3)(E) of the EUCA to describe when an individual shall be treated as actively engaged in seeking work during any week. Five SESAs commented on the active search for work requirements. Two SESAs' comments suggested that the required work search be consistent with economic conditions in the labor market, prospective job openings, seasonal nature of the work being sought and the normal practices for obtaining the type of work the individual is seeking. One of the SESAs commented that the active search for work requirement should be waived (as it is in State law for regular unemployment compensation) for individuals the State determines to have "good" job prospects; that is, individuals who have a promise of a job which will begin in a reasonably short period. One of the SESAs suggested that a State administrator be allowed to make an exception to the active search for work requirement for a community or area which has been so adversely affected by the economy that there is virtually no work available. Comments from two of the SESAs questioned if the phrase "throughout the given week" (which defines the term "sustained effort" to obtain work) included weekends and holidays and questioned the absence of specifics in the definition regarding job search contacts (number of employer contacts required throughout the week). This conflicts with the State's more quantifiable active search for work requirements. A SESA suggested that the definition of the work search requirements at § 615.2(o)(8) be used in conjunction with the criteria for the active search for work as defined in State law and policy. One of the SESA's commented that the requirement that a claimant's search for work include a plan which results in contact with persons who have "the authority to hire" is impractical and impossible to administer.

The Department has not adopted the changes proposed by the commenter for the reasons which follow. The Congress added the active search for work provisions to the EUCA with the knowledge that Extended Benefits are payable only during periods of high unemployment when new hires and job openings are at a low level in the States. Therefore, it would be contrary to congressional intent and the specific language in sections 202(a)(3) (A) and (E), EUCA, to authorize by regulation limiting the enforcement of the active search for work provisions to periods when an area is not adversely affected by economic conditions as suggested.

A State's policy for regular compensation, at the discretion of the State Administrator, may require an individual to seek any work that exists in the labor market for which he/she is suited by training and experience if his/her customary work does not exist in the labor market. Similarly, a State's policy for regular benefits may consider the seasonal nature of the individual's customary occupation in determining if the claimant is conducting an active

search for work or waive the active search for work requirement for individuals who are on temporary layoffs or who have early return to work dates.

On the other hand, based on examination of the Congressional Record S8917, June 30, 1980, and the language in section 202(a)(3) (C) and (E), EUCA, "suitable work" for an individual whose prospects of obtaining work in a customary occupation in a reasonably short period are determined by the SESA to be "not good" is any work which is within such individual's capabilities. The EUCA makes no exception to this definition of suitable work because the unemployed person's customary employment is seasonal. This means an individual whose job prospects have been determined to be "not good" may not limit the search for work solely because of the seasonal nature of his/her customary employment. An individual whose job prospects are "not good" because of the seasonal nature of the industry or occupation must seek any work that exists in the labor market which is within the claimant's capabilities, which also includes work for which the individual may have had no previous training or experience.

The proposed regulations, § 615.8, paragraphs (d), (f) and (g), relate the definition of suitable work, based on the SESA's determination of the individual's prospects of obtaining work in a customary occupation in a reasonably short period, to the requirement of a "systematic and sustained" search for work as provided in section 202(a)(3)(A)(ii) and (E) of EUCA. For these reasons, no change is made to § 615.2(o)(8) in the final regulations to authorize waiving or limiting the active search for work requirement because of the seasonal nature of the individual's customary employment, prospective job openings, adverse economic conditions or normal practices in obtaining work the claimant may be seeking.

The phrase "throughout the given week" defines "sustained effort to obtain work during such week". "Throughout the given week" means a search for work maintained throughout the work week prevailing or customary in the labor market area for the particular type of work being sought. This is based on the plain meaning of the words "systematic and sustained". Section 615.2(o)(8) derives from section 202(a)(3) (A) and (E) of the EUCA and provides for implementation of these provisions consistent with congressional intent as expressed in the Congressional Record (S8935–6, June 30, 1980); that is, "* * * to limit access to the extended benefit program * * * to individuals * * * who have made every effort to return to work * * *."

It is the Department of Labor's position that to administer the systematic and sustained effort to obtain work provision set forth in section 202(a)(3)(E) of EUCA means that each State employment security agency (SESA) must develop criteria for a systematic and sustained search for work for the various labor market areas within the State. These criteria must be based on labor market information (LMI), in particular, the number of employers in a labor market area, and whenever possible developed in consultation with LMI specialists. These criteria must be expressed in the number of days "throughout the given week" the individuals are required to search for "suitable work" as well as the number of contacts with prospective employers individuals shall be required to make during a week to maintain their eligibility for extended benefits. The development of guidelines and criteria for a systematic and sustained search are necessary to assure the even-handed application of the active search for work requirement to all similarly situated claimants (same labor market area and job prospects classifications) subject to this requirement. The guidelines are also necessary for each State's monitoring of claimants' active search for work for the purpose of detecting noncompliance as part of the processing of weeks claimed for payments.

It is the responsibility of the SESAs to administer the active search for work provisions in State law as required by the EUCA. Each State is best qualified to assess the characteristics of its local labor markets based on LMI specific to the local areas within the State and to establish guidelines for the required active search for work. Therefore, it would be inappropriate for the Department to take over the States' responsibility for administering the EB active search for work and impose by regulation specific, quantifiable, nationwide work search requirements based on the characteristics of local labor markets. The States' methods of administering the active search for work requirements are best expressed in the number of days during the given week an individual shall search for work and the number of employer contacts ("more quantifiable") an individual must make during such week. Such criteria are essential for monitoring claimants' active search for work and for enforcing the EB active search for work requirements in State law. The States' criteria for a systematic and sustained search for work are consistent with § 615.2(o)(8) of these regulations if the criteria provide for a high level of job search activity sustained throughout the given week based on the number of employers in the particular labor market area. The Department agrees, however, that it is not consistent with the section 202(a)(3) work test, regardless whether the claimants' job prospects are classified as "good" or "not good", to require claimants to search for types of work which they may not be required to accept. The final rule is clarified to reflect this.

Regarding "contacts with persons who have the authority to hire" in § 615.2(o)(8)(ii), the Department acknowledges that it is possible for a person to make a planned, systematic effort to obtain work and yet not make contact with the person who has the authority to hire. Accordingly, the phrase "contacts with persons who have the authority to hire" in the regulation is modified to also include applying for work by "whatever hiring procedure is required by a prospective employer."

The Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations commented on:

Section 615.2(o)(8)(iii) "systematic and sustained effort" (to obtain work), and

Sections 615.8(e) (5) and (6), suitable work related to the individual's prospects of obtaining work in his/her customary occupation in a reasonably short period.

Section 615.2(o)(8)(iii) of the proposed rule provides that a "systematic and sustained effort" (to obtain work) includes:

(iii) Actions by the individual comparable to those actions by which jobs are being found by people in the community and labor market, but not restricted to a single manner of search for work such as registering with and reporting to the State employment service and union or private placement offices or hiring halls, except the individual while classified by the State as provided in section 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable) in the same manner that such work is found by people in the community.

The Building and Construction Trades Department objected to this section of the proposed rules because some State unemployment compensation laws require a member of a building and construction trades union to seek or accept a job (to maintain his/her eligibility for unemployment compensation) which might jeopardize

the individual's union membership. It contends that such State laws violate the Supremacy Clause of the Federal Constitution by improperly interfering with national policy embodied in the National Labor Relations Act of the right of full freedom of association through union membership. In addition, the labor organization contends that the Department's deference to State law and policy with regard to this issue, as embodied in the proposed rules, is also inconsistent with the union members' freedom of association guaranteed by the National Labor Relations Act. Accordingly, the Building and Construction Trades Department recommended that proposed § 615.2(o)(8) be modified to provide expressly that a "systematic and sustained effort" to look for suitable work, as required by section 202(a)(3)(E) of EUCA, is satisfied if the individual falls within the category of workers who secure employment through the efforts of a union hiring hall established pursuant to a collective bargaining agreement. The Building and Construction Trades Department objected to § 615.8(e) of the proposed rule because it does not list nonunion work as work that is not suitable when an individual's job prospects have been determined to be "not good."

The Congress amended (Pub. L. 96-499) the Federal-State Extended Unemployment Compensation Act of 1970 to require that:

> * * * as a condition of eligibility for extended unemployment benefits, the unemployed individual must be willing at that point to accept any job which meets minimum standards of acceptability (such as basic health and safety standards, compliance with Federal minimum wage and other existing Federal standards) * * *.
>
> Congressional Record S8917, June 30, 1980.

Under the amended Act, "suitable work" for any individual claiming extended benefits whose prospects of obtaining work in his/her customary occupation in a reasonably short period are not good, is any work that does not exceed the individual's physical and mental abilities.

The amendments to the Act also provide in subparagraph (A) that payment of extended compensation shall not be made to any individual for any week of unemployment—

"(ii) during which he fails to actively engage in seeking work."

As provided in subparagraph (E) the individual shall be treated as actively engaged in seeking work during any week if—

(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

The broadening of the definition of "suitable work" to include work in addition to that at the individual's higher skills or customary work is designed to increase the range of jobs individuals must seek and accept and to increase the prospects of reemployment of individuals who had been unemployed for extended periods of time. The intent of Congress in amending the Act was "to limit access to the extended benefit program * * * to individuals who have demonstrated a reasonable attachment to the work force, lost their jobs involuntarily, and made every effort to return to work." Congressional Record S8935, June 30, 1980.

The Department's position on a "systematic and sustained effort" to obtain work as expressed in § 615.2(o)(8) of the proposed rules is based on the language in section 202(a)(3)(E), EUCA, and examination of the Congressional Record S8917, S8935, June 30, 1980. The active search for work and the suitable work provisions added to EUCA by the Omnibus Reconciliation Act of 1980 were designed to reduce benefit costs by targeting the payment of Extended Benefits to those individuals who are willing to apply for and accept suitable work which does not fully match the individual's higher skills and earnings levels and who increase their efforts to find any work within their capabilities.

Therefore, based on the plain meaning of the words, a "systematic and sustained effort" to obtain work, the proposed rules define this requirement as a planned, methodical search conducted throughout each week claimed. It is a search for work not limited to a single method of finding work such as reporting to a union hiring hall or the State job service office. It is a search for work not limited to classes of work or rates of pay which represent the individual's higher skills or customary work except where the State classifies the individual as having good prospects of finding work in his/her customary occupation in a reasonably short period. Under the proposed rules registering for work at a union hiring hall is considered to be the same as any other single effort to obtain work, such as answering a help wanted advertisement in a newspaper, and of itself is not evidence of a systematic and sustained search for work.

Instructions to an individual to increase his/her efforts to find work and to engage in a "sustained" search for work solely through a union hiring hall serve no purpose when union members are dispatched to jobs according to seniority or length of unemployment. Under this referral system, those union members who have the earliest registration for work or the greater seniority will be the first dispatched to jobs regardless of daily reporting to the union hiring hall or requests from union members with less seniority for referrals to work outside the usual order.

The language in § 615.2(o)(8) of the proposed rule implements the plain meaning of the words in section 202(a)(3)(E); i.e., "the individual has engaged in a systematic and sustained effort to obtain work". This language defines the requirement that individuals actively engage in a search for work as is specifically required by section 202(a)(3)(A)(ii). This means that the individual must do more than be passively available for work or that the individual only stands ready to work if work is offered as would be the case if the individual limited the search for work to registering for work with the union or the State job service office.

Therefore, neither registration at a union hiring hall nor registration for work with the State job service office of itself fulfills the requirement of section 202(a)(3)(E); i.e., "engaged in a systematic and sustained effort to obtain work during such week * * *." The exception to this rule with respect to the union hiring hall is while the individual has been classified by the State as having "good" prospects of obtaining work in her/his customary occupation in a reasonably short period. This exception means the individual's registration at a union hiring hall may be considered to fulfill the requirement for a systematic and sustained effort to obtain work during such week provided such individual normally obtains customary work through the hiring hall and only if under the State's law applicable to regular compensation such individuals are permitted to limit their search for work to registering for work at the union hiring hall. Subclauses (I) and (II) of section 202(a)(3)(ii) of the EUCA convey the only other limitations to the requirement of a "systematic and sustained effort" to obtain work during each week for which sharable compensation is claimed.

The Department believes that the question of supremacy of Federal law is without relevance to the proposed rules for the Extended Benefits Program because Congress has made State laws

the vehicle for implementing Federal policies. This is the case with respect to the Federal-State Extended Unemployment Compensation Act of 1970 because the States are required to include the provisions of EUCA in State laws.

The proposed rules for Extended Benefits do not prevent or curtail union members' right of freedom of association. The labor standards in section 3304(a)(5), IRC, are applicable to the suitable work provisions in section 202(a)(3) of EUCA. The Department has never taken the position that requiring unemployed union workers to accept offers of nonunion work in their customary occupations would, in itself, violate the labor standards even where acceptance of the nonunion work in their customary occupations would violate the bylaws and constitution of the labor organization. This is an area that has been left to the States to determine under their laws. Thus, it is a matter of State law whether members of labor organizations are subject to denial of Extended Benefits for failing to apply for or accept nonunion work in their customary occupations. This is a continuation of the position taken by the Social Security Board early in the Federal-State unemployment compensation program and followed by its successors, including the Department of Labor. The labor standards are applicable to the work test in section 202(a)(3), EUCA by virtue of section 202 (a)(3)(D)(iii). Therefore, this position, regarding members of labor organizations and the labor standards in State law, applies without exception to section 202(a)(3) regardless of whether an individual's job prospects are classified or determined to be "good" or "not good."

The preamble of the proposed rule noted that the proposed rule contained some provisions on the EB work test that differed from guidance previously furnished to the States. The comments received reveal that there is a lack of understanding of the Department's position on some matters left to the States under the labor standards and section 202(a)(3), EUCA. Therefore, the regulations are changed in this final rule to make it clearer that whether union members must seek and accept nonunion work in their customary occupations is a matter left to each State to determine under its law. In addition, each State must determine under its law whether a union member, who (1) the State has determined to have "good" job prospects and (2) who normally obtains work in his/her customary occupation through a hiring hall, must seek and accept work other than through the union hiring hall. On these two matters regarding the work search the applicable State law applies, as is required by section 202(a)(2), and within the intendment of section 202(a)(3)(D)(iii), EUCA. Such State law provisions with respect to the labor standards that pertain to nonunion work and members of labor unions "are not inconsistent with the provisions of subparagraphs (C) and (E)". In this connection, as noted above, the final rule is also clarified to convey that section 202(a)(3), EUCA does not require or permit claimants for sharable compensation to be required to seek work which is an exception to section 202(a)(3)(A)(i) as specified in section 202(a)(3)(D). That is, section 202(a)(3) does not require claimants for sharable compensation (or permit to be required) to seek work which if refused could not justifiably result in the imposition of the 4×4 disqualification for failing to accept any offer of suitable work.

Section 615.2(o)(9) "Tangible evidence" of an active search for work

The proposed regulation at § 615.2(o)(9) defines "tangible evidence" of an active search for work for the purposes of section 202(a)(3)(E) of EUCA. Comments were received from two SESAs on this definition. One SESA questioned the necessity of including the type of work being sought and the listing of every contact with an employer in the documentation of "tangible evidence" of an active search for work. The other SESA suggested that the "tangible evidence" include the method used to seek work to enable a State to determine if an individual's search for work was "systematic".

The definition of "tangible evidence" does not require listing of every employer contact an individual makes during a given week. However, the State must require claimants to list, at a minimum, the number of employer contacts the State has determined to be evidence of a sustained search for work during such week. The number of contacts with prospective employers a SESA requires individuals to make during a week to demonstrate a "systematic and sustained" search for work will vary according to the characteristics of the labor market areas within the State. Therefore, States must design the form used to obtain "tangible evidence", as set forth in § 615.2(o)(9), of an active search for work during a week with space for a sufficient number of entries of work search (employer) contacts to accommodate the variations in the number of employers and characteristics of the various local labor market areas within the State. The States that use one form statewide for individuals to report "tangible evidence" of a systematic and sustained search for work should design this form, the report of work-seeking activities, with space sufficient for claimants to enter the number of employer contacts required to demonstrate a systematic and sustained search for work during a week(s) in the labor market area in the State with the largest number of employers.

The listing of the type of work sought as an element of information in the "tangible evidence" of the individual's efforts to obtain work is necessary for monitoring of claimants' continuing eligibility for Extended Benefits. "Suitable work" for individuals whose prospects of obtaining work in their customary occupations in a reasonably short period are determined to be "not good" is any work that the individual has the physical and mental capacity to perform. A SESA that does not require claimants to report the type of work being sought will be unable to determine if an individual's search for work is systematic. The SESA will be unable to determine if an individual whose job prospects are "not good" is limiting the search for work to a customary occupation or is conducting the required search for any work that the claimant has the physical or mental ability to perform and which meets the criteria of section 202(a)(3)(D), EUCA.

Similarly, the method used to seek work is a necessary element in the "tangible evidence" because it enables the States to determine if an individual's search for work was "systematic". That is, a method of applying for employment is "systematic" when it is the appropriate method for the particular job being sought because it is the method by which most individuals in the particular job were hired. For example, applying for work by telephone is not a systematic method of seeking work if an individual makes a telephone call to an employer who hires only through in-person job applications. Although "actions taken" could be construed to include the method of applying for employment, the Department has added "method of applying for work" to the information required for tangible evidence of an active search for work to make the definition in § 615.12(o)(9) clearer. The type of work being sought will be retained in the definition of "tangible evidence" because it is necessary for monitoring the active search to determine if an individual's search for work is systematic.

Section 615.2(o)(12) "Hospitalized for treatment of an emergency or life-threatening condition"

Pub. L. 98–21 amended EUCA section 202(a)(3) to provide exceptions to the disqualification for failing to actively search for work which could be purged only if the individual returned to work for at least 4 weeks and earned at least 4 times the weekly benefit amount. Section 202(a)(3)(A)(ii) of EUCA permits the States to determine weekly eligibility for claimants of extended benefits who are hospitalized for treatment of an emergency or a life-threatening condition based on the availability for work provisions if the same provisions in State law are applicable to claimants for regular benefits which are not sharable.

A SESA commented that the definition of the term "hospitalized for treatment of an emergency or life threatening condition" was an unduly complex definition and that this term could be left for the States to interpret.

The Department issued Unemployment Insurance Program Letter (UIPL) No. 41–83 to implement the amendment to the EUCA required by Pub. L. 98–21. In this program letter, the Department stated that it would incorporate the definition of this term as set forth in the UIPL in a future amendment to the Extended Benefit regulations. Therefore, § 615.2(o)(12) repeats the words in the definition of the term, "hospitalized for treatment of an emergency or life threatening condition" that were in UIPL 41–83. The Department defined the term because the EUCA specifically provides for the definition of the term "as such term may be defined by" the Secretary of Labor. The definition may be considered complex because it includes more than one part; however, it is not a definition that is difficult to understand. Significantly, the definition conveys precise meaning. Therefore, the definition at § 615.2(o)(12) is not changed or deleted because deleting the definition would ignore a duty imposed by law and create the possibility of inconsistencies in the application of this provision.

Section 615.2(p)(1) (ii) and (iii) The "first two weeks" as used in section 202(c), EUCA

The proposed rule at § 615.2(p)(1) (ii) and (iii) defines visiting and transient claims as claims not filed under the interstate benefit (IB) payment plan and therefore not subject to the two-week limitation which applies to IB claims filed in an agent State not in an EB period.

A SESA suggested that § 615.2(p)(1) clarify if the two-week limitation on Extended Benefit payments of section 202(c), EUCA, applies to an individual who resides in a State that is not in an Extended Benefit Period but who reports and files intrastate claims in a bordering State that is in an Extended Benefit Period. Another SESA questioned if excluding visiting and transient claims from the "two-week" IB provision would result in an uneven application of this restriction because practices of accepting transient and visiting claims vary from locality to locality.

This last comment is interpreted to mean that some visiting claimants are erroneously required to file IB initial claims; therefore, all transient and visiting claims should be processed as IB initial claims. Such claims processing would only increase the number of errors. The language of section 202(c)(1), EUCA, specifically limits the application of the denial after two weeks to claims filed under the IB plan. Transient claims and visiting claims which are not filed under the interstate plan are intrastate claims and therefore are not subject to the two-week IB denial provision. Similarly, intrastate claims filed by an individual who resides in a State that is not in an Extended Benefit Period is not a claim filed under the IB plan and therefore not subject to the two-week denial provision of section 202(c) of the Act. The final regulations include language to clarify that section 202(c) of the Act does not apply to intrastate Extended Benefit claims filed by individuals who reside in a State that is not in an Extended Benefit Period. Sections 615.2(p)(1) (ii) and (iii) will not be changed to apply the two-week denial to visiting or transient claims in the final regulations because such a change would be contrary to the law, EUCA, section 202(c).

Section 615.7(c)(3) Changes in accounts

The proposed rule at § 615.7(c)(3) provides for adjustments to extended benefit accounts made necessary by a redetermination or an appeal which awards an individual more or less regular unemployment compensation. A SESA identified an omission in § 615.7(c)(3); that is, "If such decision reduces the duration of regular compensation payable to the individual, the claim for extended benefits shall be backdated to the earliest date, subsequent to the date when the redetermined regular compensation was exhausted and within the individual's eligibility period, that the individual was eligible to file a claim for Extended Benefits." The final sentence of the present regulation also was omitted.

This language omitted in § 615.7(c)(3) of the proposed rule is restored in the final regulation, and other unintended errors in paragraphs (c)(2) and (c)(3) are corrected. It is the Department's position that the "work test" may not be applied retroactively. Therefore, when there is a backdating of an individual's claim prior to the date of the individual's original claim for Extended Benefits, no retroactive disqualification may be imposed for failing to meet the eligibility requirements of section 202(a)(3)(A), EUCA, except a disqualification beginning as provided in § 615.8(h)(4) of the final regulation.

Section 615.8(c) Terminating disqualifications

The proposed rule at § 615.8(c) provides that for certain disqualifications an individual must have employment required by State law subsequent to the disqualification to terminate the disqualifications for purposes of eligibility for Extended Benefits. A SESA requested that the regulations explain if Extended Benefits would be denied under § 615.8(c) of the proposed rule when a State law ("Robert Fabric" decision) provides that an individual shall be disqualified from the receipt of subsequent regular or Extended Benefits to the extent that such benefits would have decreased by virtue of earnings from part-time employment that the individual quit, was discharged from or refused to accept.

Under section 202(a)(4) of the EUCA, no provision of State law or interpretation of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct or refusing an offer of suitable employment shall apply for purposes of payment of Extended Benefits, unless such termination is based upon employment, as required by State law, subsequent to the date of such disqualification. Thus, in the example given, an individual whose eligibility for (reduced) regular benefit payments continues after a disqualification and where the State law does not require subsequent employment to purge the disqualification would not be eligible to receive or continue to receive extended compensation. The language in § 615.8(c)(2) of the proposed rule,

> * * * shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated, even though it may have been terminated on other grounds * * *,

is adequate to prohibit payment of Extended Benefits in the example given and similar situations when a disqualification is served or purged by penalties other than subsequent employment. Section 202(a)(4) is an eligibility requirement, and it is a requirement for State laws. For this reason no change will be made in the final regulations at § 615.8(c).

Section 615.8(d) Determinations of job prospects

The proposed rule at § 615.8(d) provides that the SESAs shall classify each individual's prospects of obtaining employment in his/her customary occupation in a reasonably short period as "good" or "not good". The SESA's classification of the individual's prospects of obtaining employment in his/her customary occupation in a reasonably short period as "good" or "not good" is made at the filing of an initial claim. A SESA recommended that this section be eliminated. The SESA contends that this procedure is administratively cumbersome and costly and because the individual's job prospects only affect whether the suitable work provisions in State law (for regular benefit claimants) or the suitable work provisions in State law corresponding to sections 202(a)(3) (C) and (D), EUCA, shall apply. Another SESA objected to § 615.8(d)(3) because of the problem of funding (cost of administering) the job prospects classification because classifying an individual's job prospects was not a separately reportable workload item for funding purposes.

The classification of an individual's job prospects as "good" or "not good", as provided under § 615.8(d), is necessary to determine what constitutes "suitable work" under EUCA section 202(a)(3)(C). The individual's job prospects classification will establish the type of work the individual must seek and accept to maintain eligibility for Extended Benefits. To enable claimants to preserve this eligibility it is mandatory that the State classify and inform claimants of their job prospects and the kind of jobs they must accept and actively seek each week. This information is essential to enable claimants to protect their rights and understand what they must do to meet the eligibility requirements in State law for Extended Benefits. The States' duty to inform claimants of their responsibilities is explained in *Information to claimants* at § 615.8(h) of these regulations.

With respect to the comment that the job prospects classifications cause a funding problem, the minutes per unit (MPU) for Extended Benefit initial claims were increased on the Department's initiative to simplify administrative financing (Administrative Financing Initiative). The increased MPU for Extended Benefit initial claims includes the time for classifying an individual's job prospects. The job prospects classification is not a separately appealable nonmonetary determination. The determination with respect to job prospects is part of the fact finding in any suitable work or active search for work determination that is made when an issue arises and a determination must be made. Therefore, the requirement of classification of an individual's job prospects at § 615.8(d) is retained in the final regulations.

Section 615.8(f) Refusal of work and § 615.8(g) Actively seeking work

Sections 615.8 (f) and (g) provide for the conditions for disqualifying an individual for failing to conduct the required search for work and for failing to apply for or accept an offer of suitable work. These sections also explain the disqualification which applies for such failures and relate suitable work to a determination of the individual's job prospects. A SESA commented that in previous issuances the disqualification for failing to apply for or accept an offer of suitable work if job prospects were determined to be "good" was the disqualification provision in State law applicable to claims for regular compensation for refusing an offer of suitable work. The SESA also commented that the EB work test (sections 202(a)(3)(A) (i) and (ii)) of EUCA should not be applied to weeks of Extended Benefits paid retroactively.

It is Department's position that the work test may not be applied retroactively, as explained in our response to the comment regarding § 615.7(c)(3) of the proposed rule. We concur with this comment and the final regulation is consistent with this view.

The final rule provides, as did the proposed rule, that an individual shall be ineligible for Extended Benefits for the week the individual fails to conduct the required search for work or fails to accept or apply for an offer of suitable work. The individual's ineligibility shall continue thereafter until he/she is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount (4X4 disqualification), regardless of the individual's job prospects. This is based on a closer reading of sections 202(a)(3) (A) and (B) of the Act, and is a change from guidance previously furnished to the States. Subparagraph (B) relates the 4X4 disqualification to sections 202(a)(3)(A) (i) and (ii) without regard to the individual's job prospects. As provided in EUCA section 202(a)(3)(C), suitable work for an individual whose job prospects are "good" is determined in accordance with State law applicable to regular compensation. Section 202(a)(3)(C) makes no reference to the disqualification in applicable State law for refusing an offer of suitable work. On the other hand, section 202(a)(3)(B) specifically applies to any failure described in clause (i) or (ii) of subparagraph (A). Therefore, whether the failure is of a clause (i) or clause (ii) type, the 4X4 disqualification applies, and it is irrelevant for these purposes whether the claimant's job prospects are classified or determined to be "good" or "not good". For these reasons, no change is made to the final regulations.

Section 615.12 Determination of "on" and "off" Indicators

The proposed rule at § 615.12 provides for the computation by the State agency of the rate of insured unemployment statewide for purposes of triggering "on" or "off" the payment of extended benefits in the State. Only one SESA commented on the method of determining "on" and "off" indicators for the purpose of paying Extended Benefits.

The SESA commented that the formula for triggering "on" Extended Benefits does not work for it because of the State's huge land area. The unemployed workers in areas of high unemployment within the State are not eligible for Extended Benefits, in spite of their great need, because the trigger for Extended Benefits is based on the statewide rate of insured unemployment. The SESA suggested that different triggers be developed which would bring about more equitable treatment of the unemployed workers in a State large in land area comparable to benefits provided to unemployed workers in smaller States. The SESA further commented on the apparent widening of the gap between the total unemployment rate (TUR) in the State and the insured unemployment rate (IUR) and the possibility of establishing new indicators for Extended Benefits by combining the IUR and the TUR. The State also commented that it has never triggered "on" Extended Benefits based on the State IUR and that the State is ill-served by the current triggers for the Extended Benefit Program that respond only to the statewide rate of insured unemployment.

On June 18, 1987, the Department of Labor published for competitive bidding

a request for proposals (RFP) to conduct a study of the feasibility of substate area triggers for the payment of unemployment benefits. The purpose of this study is to design substate area benefit policy options under which Extended Benefits could be paid for durations beyond the regular UI program in depressed labor market areas while avoiding the payment of Extended Benefits in labor market areas that are not depressed. The study will be conducted from 10/1/87 to 3/31/89. The Department of Labor does not have the legal authority to establish triggering mechanisms for the payment of Extended Benefits based on unemployment in substate areas, or to alter the trigger criteria, because the EUCA specifically provides for triggers based solely on the statewide rate of insured unemployment. The interests of the State in changing the triggers would have to be addressed by legislation, not through the regulatory process. The study is designed to provide the Department and the Congress with the information and analysis necessary to make a responsible decision about this matter. Therefore, no change is made to the final regulations at § 615.12.

Section 615.12(d)(1) Amendment of State indicator rates

The proposed rule at § 615.12(d)(1) establishes a time limit for making retroactive corrections to State "on" or "off" or "no change" indicators. It also provides that any changes to the indicators within the time limit shall be subject to the concurrence of the Department. A SESA commented that this regulation could result in a State not receiving funds for the cost of taking initial Extended Benefits claims when an "on" indicator is amended during the third week following the indicator week. The SESA also commented that the phrase "concurrence of the Department" needed clarification.

Any State that processes Extended Benefits initial claims workload prior to amending an "on" indicator shall receive funds only for the administrative cost by activity by reporting the EB initial claims on the ETA 5159 report and in the EB section of the Quarterly Financial Report (UI 3). The State should explain in a footnote on the UI 3 why there is Extended Benefit initial claims activity when the State was not in an Extended Benefit Period.

The first comment appears to argue for reducing the time allowed to the States for amending an indicator to less than three weeks after the indicator week. This regulation allows the States only eight calendar days from the due date of the States' initial notice to the Secretary to discover errors in counts or computations and to amend their indicator rates. As provided in § 615.12(e), a State must notify the Secretary within 10 days after the end of any week if there is an "on" or "off" or "no change" indicator in the State. A reduction in the time to amend State indicators from three weeks to two weeks would in fact allow a State only four days to make such corrections and recomputations. The Department believes that eight days is a reasonable and suitable amount of time to allow States to discover errors and to make recomputations necessary for amending their indicators. For these reasons, the time limit for amending a State indicator will not be changed in the final regulations. Further, the commenter is correct that a State is not entitled to Federal sharing in any benefits paid outside an Extended Benefit Period or otherwise not in accordance with the terms and conditions of the Federal-State Extended Unemployment Compensation Act of 1970.

The concurrence of the Department means that the amendment of a State indicator shall not become final until the notice of amendment to a State indicator is accepted by the Department as provided in § 615.12(e). Paragraph (e) of § 615.12 provides that an indicator notice shall not become final until it is accepted by the Department. An amended indicator notice must also be acceptable to the Department. Accordingly, a reference to paragraph (e) of this section is included in paragraph (d) to define the "concurrence of the Department" in the final regulation.

Section 615.14 Payments to States

The proposed regulation at § 615.14(d) provides that the Department of Labor may withhold reimbursement of the Federal share to a State or require repayment of the Federal share of payments previously reimbursed for any payments that were not Extended Benefits because they were not paid under the terms and conditions that are consistent with the EUCA or the regulations. Seven SESAs (New York, Nevada, Tennessee, Illinois, West Virginia, Vermont and Ohio) questioned the legal authority of the Secretary to mandate withholding or recovering reimbursement of the Federal share for "Any payment made to a claimant for any week with respect to which the claimant was either ineligible for or not entitled to the payment." Three of the SESAs' comments included requests for clarification of this section. One of the SESAs contended that the proposed rules are contrary to the conformity procedures set forth in sections 3304 and 3310 of the Federal Unemployment Tax Act (notice, fair hearing and judicial review) and undermine the traditional sharing of Extended Benefit costs between the States and the Federal Government. One SESA commented that § 615.14(d) was inconsistent with Region V SESA Letter No. 57–85, and objected only if the proposed rules at §§ 615.14 (c) and (d) are retroactively applied.

Two SESAs commented that the proposed rules at §§ 615.14 (c) and (d) would require States to bear the full cost of any Extended Benefits paid which are subsequently determined to have been overpaid. A SESA commented that this runs counter to other federally-mandated benefit programs (UCFE, UCX, and FSC) which provide that the Federal account is only credited when overpaid benefits are recouped. One of the SESAs contends that in withholding reimbursement or requiring repayment based on a State's misinterpretation of Federal law or regulation, § 615.14(d) does not distinguish between a misinterpretation which is a blatant disregard of Federal law requirements, errors caused by honest misunderstanding or errors caused by conflicting or incorrect Federal directives. Several SESAs recommend that this section be rewritten so as to provide for the usual State procedures for overpayment determinations and recovery of EB overpayments with the Federal share credited to the Extended Unemployment Compensation Account upon recovery. Two SESAs commented that § 615.14(c)(9) means that the States will be responsible for the entire cost of any overpayment made under the Extended Benefit program. One SESA commented that only sharable regular benefits were subject to nonreimbursement after March 31, 1981 with respect to the unpaid waiting week provision in section 204(a)(2)(B) of the EUCA. Therefore, the proposed rule erroneously indicates that extended compensation was subject to nonreimbursement after March 31, 1981 rather than after September 25, 1982.

No changes were made in response to the foregoing comments on § 615.14 for the reasons which follow. The procedural requirements and substantive rules for reimbursing States for the Federal share of sharable extended compensation and sharable regular compensation are set forth in section 204, EUCA. Section 204(a)(1) provides that—

(1) There shall be paid to each State an amount equal to one half of the sum of—

(A) the sharable extended compensation, and

(B) the sharable regular compensation, paid to individuals under the State law.

The term "sharable extended compensation" is defined in section 204(b) of the Act as Extended Benefits paid to an individual in the individual's eligibility period, up to the maximum limit prescribed in EUCA section 202(b)(1). Extended compensation is itself separately defined in section 205(3) as:

* * * compensation * * * payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

Thus, sharable extended compensation is only those Extended Benefits paid "under those provisions of the State law which satisfy the requirements of this title with respect to the payment of" Extended Benefits. Sections 201–203 of the Act prescribe these requirements. Any benefit payment made under a State law that is not in accordance with those terms and conditions is not sharable extended compensation as defined in section 204(b) of the Act, since it is not extended compensation as defined in section 205(3) of the Act. Similarly, any payment to an individual for any week the individual was, for any reason, either ineligible for, or not entitled to, the payment is not sharable extended compensation because the payment is not in accord with the terms and conditions of sections 201–203 of the Act. This also means that any overpayment of extended compensation, whether or not the State waives recovery of such overpayment, is not sharable extended compensation because the payment did not satisfy the requirements of the Act with respect to the payment of Extended Benefits.

This conclusion is supported by section 204(d) of the Act, which reguires the Secretary to estimate the monthly payment each State "is entitled to receive" under the Act. No State is entitled to receive more than payment for the benefits described above, that is, its sharable benefits as defined in the Act. Therefore, section 204 of the Act precludes a payment to any State with respect to any benefit payment that was not paid under provisions of a State law that accord with all the terms and conditions for the payment of Extended Benefits specified in sections 201–203 of the Act. Where there is no authority to make a payment under section 204, there is no right in a State to receive a payment or obligation on the Secretary to make a payment. Section 204(d) of the Act states:

(d) There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

Section 204(d) provides the sole basis upon which the Secretary shall determine the amount which each State is to be paid each month. No hearing procedure is provided for or required under section 204. The financial assistance provisions of section 204 are not a part of the requirements encompassed by section 3304(a)(11) of the FUTA, and therefore, the procedural requirements of sections 3304 (c) and (d) of the FUTA are inapplicable to EUCA section 204. Paragraph (d) of § 615.14, however, sets forth a procedure for informal resolution of differences that may arise, which includes opportunities for the State to present its views and arguments. In addition to the procedures set forth in § 615.14, the Department may, in the exercise of its authority to assure that Federal funds are properly spent, alternatively recoup overpayments through the audit process.

The comparison of the overpayment recovery procedures for Federal benefit overpayments with the Federal share of Extended Benefit overpayments and the application of the *Lopez Rule* to Extended Benefits are not apt. The States have entered into agreements with the Secretary to administer the Federal unemployment benefit programs (UCFE, UCX, TAA, DUA, FSC). The States act as agents for the Secretary to pay Federal unemployment benefits. On the other hand, Extended Benefits are State benefits for which the States receive 50 percent reimbursement as the Federal share. The conditions for reimbursing the States for sharable extended compensation are set forth in section 204 of the Act. Under these provisions and § 615.14, a State is entitled to be reimbursed for its cost of paying sharable benefits, which is to say benefits paid to eligible claimants in accordance with State law corresponding in all respects with the terms and conditions of sections 201–203 of the Act, except as such sharing is precluded by the provisions of sections 202(a)(6) and 204.

The sequence of audit reports and the intervals between the draft audit and the final determination for UI audit resolution in SESA Letter No. 57–85 are not consistent with § 615.14(d) of the proposed rule because they are separate and distinct processes. Section 615.14(d) provides an informal procedure for the adjustment of payments to a State under the authority in section 204(d) of the Act, whereas the SESA letter concerns audit resolutions. They are therefore different processes. For the reasons above, no change will be made to the final regulations at § 615.14. However, the final rule is clarified by adding a new paragraph (3) to the definition of "sharable compensation" in § 615.2(i) to assure consistency with § 615.14.

When the proposal to revise the EB regulations was published in the Federal Register in 1988, it was the Department's position that for a State to receive Federal sharing for extended and sharable regular compensation, the State was required to apply provisons of its law conforming to section 202(a)(3), EUCA to weeks of unemployment beginning after March 31, 1981. This was the date set forth in section 1024(b) of Pub. L. 96–499 and this date was the effective date for both extended and sharable regular compensation. However, for purposes of determining the Federal share of weeks of unemployment beginnning after March 31,1981, section 9151 of the Budget Reconciliation Act of 1987 (Pub. L. 100–203) changed the original effective date of section 202(a)(3) (March 31, 1981 as specified in section 1024(b) of Pub. L. 96–499) to weeks of unemployment beginning after October 31, 1981. This change makes extended and sharable regular compensation sharable for weeks of unemployment beginning after March 31, 1981 to October 31, 1981. If a State's legislature did not meet in 1981, section 202(a)(3), EUCA would apply to weeks of unemployment beginning after October 31, 1982. Therefore, the March 31, 1981, effective date for section 202(a)(3), EUCA in the proposed rule will be changed to weeks beginning after October 31, 1981 in the final regulation.

Pub. L. 96–499 amended the EUCA by adding paragraphs (3) to (5) to section 202(a). Section 202(a)(3) provides for active search for work and "suitable work" requirements for the payment of Extended Benefits; section 202(a)(4) relates to eligibility after certain disqualifications. The amendments to the EUCA in Pub. L. 96–499 appear under the heading "Limitation on Extended Unemployment Compensation Program". In addition, the language in 202(a)(3)(A) of the Act specifically refers only to "payment of extended compensation * * *." Therefore, Congress included old section 202(a)(5):

No payment shall be made under this Act to any State in respect to any sharable regular compensation paid to any individual for any week if, under the rules of paragraphs (3) and (4), extended compensation would not have been payable to such individual for such week.

The addition of this section 202(a)(5) meant that the active search for work and suitable work provisions in section 202(a)(3) of the Act (and section 202(a)(4)) would apply to regular compensation not as a requirement per se, but only as a condition of a State's entitlement to Federal sharing of regular compensation. With this purpose there was no need for the Congress to refer to the issue of Federal sharing for extended compensation in section 202(a)(5) of the Act, because sections 202(a)(3) and (4) are eligibility requirements for payment of Extended Benefits. Congress included section 202(a)(5), cited above, so that States which pay beyond 26 weeks of regular unemployment compensation and which did not choose to comply with sections 202(a) (3) and (4) would not be entitled to Federal sharing for regular compensation that would be otherwise sharable.

However, the fact that section 202(a)(5) did not refer to extended compensation led to misunderstanding. Therefore, in 1981, Congress amended old section 202(a)(5) by adding the words "extended compensation or." When Pub. L. 97–35 amended the EUCA to insert "extended compensation or" before "sharable regular compensation" in section 202(a)(6) (formerly (5)) of the Act, it created no new authority in regard to the requirements in sections 202(a) (3) and (4) of the Act. It simply clarified authority that already existed. Therefore, no change is made in the final regulations.

Section 615.14(c)(8) Payments not to be reimbursed

The proposed regulation at § 615.14(c)(8) provides that the Department shall not reimburse States for the 50 percent Federal share of the amount by which sharable regular or Extended Benefits paid to any individual exceeds the nearest lower full dollar amount if the State does not provide for a benefit structure under which benefits are rounded down to the next lower dollar. A SESA commented that for the benefit of its claimants it rounds up the maximum benefit amount to the next higher dollar amount. The SESA expressed a preference for full reimbursement for the 50 percent Federal share when benefits are rounded up.

Section 204(a)(2)(D), EUCA, is specific. It limits reimbursement to the States of the Federal share of Extended Benefits paid if the States' benefit structure does not provide for rounding down to the next lower dollar amount in all circumstances. The regulations may not be written to contradict or change this provision of the Act and to authorize reimbursing States for the Federal share of Extended Benefits Paid when the State's benefit structure does not provide for rounding down to the next lower dollar amount. As in other matters of cost sharing, it is the State's choice to comply with the Federal law and obtain the benefits of such compliance; the Department is not authorized to permit the State to evade compliance and yet obtain the benefit. Therefore, § 615.14(c)(8) will be published in the final regulations without change.

Section 615.15(c) Weekly record of Extended Benefit data

The proposed regulation at § 615.15(c) prescribes the frequency and contents of the ETA 539 report. A SESA commented that the proposed rule identified this report as the ETA 5–39 and that in other issuances this report is identified as the ETA 539 report. The hyphen in 539 in the proposed rule was included through inadvertance. The hyphen is deleted in the final regulations.

Other Changes

Other technical and clarifying changes are made throughout the regulations, including correcting errors of inclusion and exclusion in the Notice of proposed Rulemaking published on October 24, 1986 (most notably in §§ 615.7(c)(3) and 615.8(e)(6)). Also as noted in the preamble of the Notice of Proposed Rulemaking, particularly as it relates to the requirements of section 202(a)(3), EUCA, these regulations differ from guidance previously furnished to the States in other issuances prior to the publication of the Notice of Proposed Rulemaking.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment. Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 535–0600 (this is not a toll free number).

Classification—Executive Order 12291

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Some provisions may entail additional costs, for example, the active search for work and suitable work provisions, but the costs will be offset by savings in benefit expenditures by the tightened eligibility requirements. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

Information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 1205–0028 which applies to § 615.15.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements amendments to an individual entitlement program and has no economic impact on any small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 615

Employment and Training Administration, Labor, Unemployment compensation.

Words of Issuance

For the reasons set out in the preamble, Part 615 of Title 20 of the Code of Federal Regulations is revised as set forth below.

Signed at Washington, DC, on July 18, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

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

Sec.

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Authority: 26 U.S.C. 7805; 42 U.S.C. 1102; Secretary's Order No. 4–75 (40 FR 18515).

§ 615.1 Purpose.

The regulations in this Part are issued to implement the "Federal-State Extended Unemployment Compensation Act of 1970" as it has been amended, which requires, as a condition of tax offset under the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*), that a State unemployment compensation law provide for the payment of extended unemployment compensation during periods of high unemployment to eligible individuals as prescribed in the Act. The benefits provided under State law, in accordance with the Act and this Part, are hereafter referred to as Extended Benefits, and the program is referred to as the Extended Benefit Program.

§ 615.2 Definitions.

For the purposes of the Act and this part—

(a) "Act" means the "Federal-State Extended Unemployment Compensation Act of 1970" (Title II of Pub. L. 91–373; 84 Stat. 695, 708), approved August 10, 1970, as amended from time to time, including the 1980 amendments in section 416 of Pub. L. 96–364 (94 Stat. 1208, 1310), approved September 26, 1980, and in sections 1022 and 1024 of Pub. L. 96–499 (94 Stat. 2599, 2656, 2658) approved December 5, 1980, and the 1981 amendments in sections 2401 through 2404 and section 2505(b) of Pub. L. 97–35 (95 Stat. 357, 874–875, 884) approved August 13, 1981, and the 1982 amendment in section 191 of Pub. L. 97–248 (96 Stat. 324, 407) approved September 3, 1982, and the 1983 amendment in section 522 of Pub. L. 98–21 (97 Stat. 65, 148) approved April 20, 1983.

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

(c)(1) "Benefit year" means, with respect to an individual, the benefit year as defined in the applicable State law.

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

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

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

(f) "Additional compensation" means compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85.

(g) "Extended compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an Extended Benefit Period, under those provisions of a State law which satisfy the requirements of the Act and this Part with respect to the payment of extended unemployment compensation, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to in this Part as Extended Benefits.

(h) "Eligibility period" means, with respect to an individual, the period consisting of—

(1) The weeks in the individual's applicable benefit year which begin in an Extended Benefit Period, or with respect to a single benefit year, the weeks in the benefit year which begin in more than one Extended Benefit Period, and

(2) If the applicable benefit year ends within an Extended Benefit Period, any weeks thereafter which begin in such Extended Benefit Period, but an individual may not have more than one eligibility period with respect to any one exhaustion of regular benefits, or carry over from one eligibility period to another any entitlement to Extended Benefits.

(i) "Sharable compensation" means:

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

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

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

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

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

(3) Notwithstanding the preceding provisions of this paragraph, sharable compensation shall not include any regular or extended compensation with respect to which a State is not entitled to a payment under section 202(a)(6) or 204 of the Act or § 615.14 of this Part.

(j)(1) "Secretary" means the Secretary of Labor of the United States.

(2) "Department" means the United States Department of Labor, and shall include the Employment and Training

Administration, the agency of the United States Department of Labor headed by the Assistant Secretary of Labor for Employment and Training to whom has been delegated the Secretary's authority under the Act in Secretary's Order No. 4–75 (40 FR 18515) and Secretary's Order No. 14–75.

(k)(1) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

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

(3) "State agency" means the State Employment Security Agency of a State which administers the State law.

(l)(1) "State law" means the unemployment compensation law of a State, approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

(2) "Applicable State law" means the law of the State which is the applicable State for an individual.

(m)(1) "Week" means, for purposes of eligibility for and payment of Extended Benefits, a week as defined in the applicable State law.

(2) "Week" means, for purposes of computation of Extended Benefit "on" and "off" and "no change" indicators and insured unemployment rates and the beginning and ending of Extended Benefit Periods, a calendar week.

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

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

(o) For the purposes of section 202(a)(3) of the Act—

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

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

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

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

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

(6) "And," as used in section 202(a)(3)(D)(ii), shall be interpreted to mean "or";

(7) "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii), include statutory provisions and decisions based on statutory provisions, such as not requiring an individual to take a job which requires traveling an unreasonable distance to work, or which involves an unreasonable risk to the individual's health, safety or morals; and such provisions shall also include labor standards and training provisions required under sections 3304(a)(5) and 3304(a)(8) of the Internal Revenue Code of 1986 and section 236(e) of the Trade Act of 1974;

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

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

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

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

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

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

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

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

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

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

(11) "Jury duty," for purposes of section 202(a)(3)(A)(ii), means the performance of service as a juror, during all periods of time an individual is engaged in such service, in any court of a State or the United States pursuant to the law of the State or the United States and the rules of the court in which the individual is engaged in the performance of such service; and

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

(P)(1) "Claim filed in any State under the interstate benefit payment plan," as used in section 202(c), means any interstate claim for a week of unemployment filed pursuant to the Interstate Benefit Payment Plan, but does not include—

(i) A claim filed in Canada,

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

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

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

(q) "Benefit structure" as used in section 204(a)(2)(D), for the requirement to round down to the "nearest lower full dollar amount" for Federal reimbursement of sharable regular and sharable extended compensation means all of the following:

(1) Amounts of regular weekly benefit payments,

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

(3) The State maximum or minimum weekly benefit,

(4) Partial and part-total benefit payments,

(5) Amounts payable after deduction for pensions, and

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

§ 615.3 Effective period of the program.

An Extended Benefit Program conforming with the Act and this Part shall be a requirement for a State law effective on and after January 1, 1972, pursuant to section 3304(a)(11) of the Internal Revenue Code of 1986, (26 U.S.C. 3304(a)(11)). Continuation of the program by a State in conformity and substantial compliance with the Act and this Part, throughout any 12-month period ending on October 31 of a year subsequent to 1972, shall be a condition of the certification of the State with respect to such 12-month period under section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)). Conformity with the Act and this Part in the payment of regular compensation and Extended Benefits to any individual shall be a continuing requirement, applicable to every week as a condition of a State's entitlement to payment for any compensation as provided in the Act and this Part.

§ 615.4 Eligibility requirements for Extended Benefits.

(a) *General.* An individual is entitled to Extended Benefits for a week of unemployment which begins in the individual's eligibility period if, with respect to such week, the individual is an exhaustee as defined in § 615.5, files a timely claim for Extended Benefits, and satisfies the pertinent requirements of the applicable State law which are consistent with the Act and this Part.

(b) *Qualifying for Extended Benefits.* The State law shall specify whether an individual qualifies for Extended Benefits by earnings and employment in the base period for the individual's applicable benefit year as required by section 202(a)(5) of the Act, (and if it does not also apply this requirement to the payment of sharable regular benefits, the State will not be entitled to a payment under § 615.14), as follows:

(1) One and one-half times the high quarter wages; or

(2) Forty times the most recent weekly benefit amount, and if this alternative is adopted, it shall use the weekly benefit amount (including dependents' allowances) payable for a week of total unemployment (before any reduction because of earnings, pensions or other requirements) which applied to the most recent week of regular benefits; or

(3) Twenty weeks of full-time insured employment, and if this alternative is adopted, the term "full-time" shall have the meaning provided by the State law.

§ 615.5 Definition of "exhaustee."

(a)(1) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(i) Has received, prior to such week, all of the regular compensation that was payable under the applicable State law or any other State law (including regular compensation payable to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. Chapter 85) for the applicable benefit year that includes such week; or

(ii) Has received, prior to such week, all of the regular compensation that was available under the applicable State law or any other State law (including regular compensation available to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. Chapter 85) in the benefit year that includes such week, after the cancellation of some or all of the individual's wage credits or the total or partial reduction of the individual's right to regular compensation; or

(iii) The applicable benefit year having expired prior to such week and the individual is precluded from establishing a second (new) benefit year, or the individual established a second benefit year but is suspended indefinitely from receiving regular compensation, solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(7)): *Provided,* that, an individual shall not be entitled to Extended Benefits based on regular compensation in a second benefit year during which the individual is precluded from receiving regular compensation solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)); or

(iv) The applicable benefit year having expired prior to such week, the individual has insufficient wages or employment, or both, on the basis of which a new benefit year could be

established in any State that would include such week; and

(v) Has no right to unemployment compensation for such week under the Railroad Unemployment Insurance Act or such other Federal laws as are specified by the Department pursuant to this paragraph; and

(vi) Has not received and is not seeking for such week unemployment compensation under the unemployment compensation law of Canada, unless the Canadian agency finally determines that the individual is not entitled to unemployment compensation under the Canadian law for such week.

(2) An individual who becomes an exhaustee as defined above shall cease to be an exhaustee commencing with the first week that the individual becomes eligible for regular compensation under any State law or 5 U.S.C. Chapter 85, or has any right to unemployment compensation as provided in paragraph (a)(1)(v) of this section, or has received or is seeking unemployment compensation as provided in paragraph (a)(1)(vi) of this section. The individual's Extended Benefit Account shall be terminated upon the occurrence of any such week, and the individual shall have no further right to any balance in that Extended Benefit Account.

(b) *Special Rules.* For the purposes of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, an individual shall be deemed to have received in the applicable benefit year all of the regular compensation payable according to the monetary determination, or available to the individual, as the case may be, even though—

(1) As a result of a pending appeal with respect to wages or employment or both that were not included in the original monetary determination with respect to such benefit year, the individual may subsequently be determined to be entitled to more or less regular compensation, or

(2) By reason of a provision in the State law that establishes the weeks of the year in which regular compensation may be paid to the individual on the basis of wages in seasonal employment—

(i) The individual may be entitled to regular compensation with respect to future weeks of unemployment in the next season or off season, as the case may be, but such compensation is not payable with respect to the week of unemployment for which Extended Benefits are claimed, and

(ii) The individual is otherwise an exhaustee within the meaning of this section with respect to rights to regular compensation during the season or off season in which that week of unemployment occurs, or

(3) Having established a benefit year, no regular compensation is payable during such year because wage credits were cancelled or the right to regular compensation was totally reduced as the result of the application of a disqualification.

(c) *Adjustment of week.* If it is subsequently determined as the result of a redetermination or appeal that an individual is an exhaustee as of a different week than was previously determined, the individual's rights to Extended Benefits shall be adjusted so as to accord with such redetermination or decision.

§ 615.6 Extended Benefits; weekly amount.

(a) *Total unemployment.* (1) The weekly amount of Extended Benefits payable to an individual for a week of total unemployment in the individual's eligibility period shall be the amount of regular compensation payable to the individual for a week of total unemployment during the applicable benefit year. If the individual had more than one weekly amount of regular compensation for total unemployment during such benefit year, the weekly amount of extended compensation for total unemployment shall be one of the following which applies as specified in the applicable State law:

(i) The average of such weekly amounts of regular compensation,

(ii) The last weekly benefit amount of regular compensation in such benefit year, or

(iii) An amount that is reasonably representative of the weekly amounts of regular compensation payable during such benefit year.

(2) If the method in paragraph (a)(1)(iii) of this section is adopted by a State, the State law shall specify how such amount is to be computed. If the method in paragraph (a)(1)(i) of this section is adopted by a State, and the amount computed is not an even dollar amount, the amount shall be raised or lowered to an even dollar amount as provided by the applicable State law for regular compensation.

(b) *Partial and part-total unemployment.* The weekly amount of Extended Benefits payable for a week of partial or part-total unemployment shall be determined under the provisions of the applicable State law which apply to regular compensation, computed on the basis of the weekly amount of Extended Benefits payable for a week of total unemployment as determined pursuant to paragraph (a) of this section.

§ 615.7 Extended Benefits; maximum amount.

(a) *Individual account.* An Extended Benefit Account shall be established for each individual determined to be eligible for Extended Benefits, in the sum of the maximum amount potentially payable to the individual as computed in accordance with paragraph (b) of this section.

(b) *Computation of amount in individual account.* (1) The amount established in the Extended Benefit Account of an individual, as the maximum amount potentially payable to the individual during the individual's eligibility period, shall be equal to the lesser of—

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

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

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

(2) If the State law so provides, the amount in the individual's Extended Benefit Account shall be reduced by the aggregate amount of additional compensation paid (or deemed paid) to the individual under such law for prior weeks of unemployment in such benefit year which did not begin in an Extended Benefit Period.

(c) *Changes in accounts.* (1) If an individual is entitled to more or less Extended Benefits as a result of a redetermination or an appeal which awarded more or less regular compensation or Extended Benefits, an appropriate change shall be made in the individual's Extended Benefit Account pursuant to an amended determination of the individual's entitlement to Extended Benefits.

(2) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to more regular compensation with respect to such week as the result of a redetermination or an appeal, the Extended Benefits paid shall be treated as if they were regular compensation up to the greater amount to which the individual has been determined to be entitled, and the State agency shall make appropriate adjustments between the regular and extended accounts. If the individual is entitled to more Extended Benefits as a result of being

entitled to more regular compensation, an amended determination shall be made of the individual's entitlement to Extended Benefits. If the greater amount of regular compensation results in an increased duration of regular compensation, the individual's status as an exhaustee shall be redetermined as of the new date of exhaustion of regular compensation.

(3) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to less regular compensation as the result of a redetermination or an appeal, and as a consequence is entitled to less Extended Benefits, any Extended Benefits paid in excess of the amount to which the individual is determined to be entitled after the redetermination or decision on appeal shall be considered an overpayment which the individual shall have to repay on the same basis and in the same manner that excess payments of regular compensation are required to be repaid under the applicable State law. If such decision reduces the duration of regular compensation payable to the individual, the claim for Extended Benefits shall be backdated to the earliest date, subsequent to the date when the redetermined regular compensation was exhausted and within the individual's eligibility period, that the individual was eligible to file a claim for Extended Benefits. Any such changes shall be made pursuant to an amended determination of the individual's entitlement to Extended Benefits.

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

(1) The reduction of Extended Benefits shall apply only to an individual who has not exhausted his/her Extended Benefits at the end of the benefit year;

(2) The amount to be deducted is the product of the weekly benefit amount for Extended Benefits multiplied by the number of weeks for which trade readjustment allowances were paid (regardless of the amount paid for any such week) up to the close of the last week that begins in the benefit year; and

(3) The amount to be deducted shall be deducted from the balance of Extended Benefits not used as of the close of the last week which begins in the benefit year.

§ 615.8 Provisions of State law applicable to claims.

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part, the terms and conditions of the applicable State law which apply to claims for, and the payment of, regular compensation shall apply to claims for, and the payment of, Extended Benefits. The provisions of the applicable State law which shall apply to claims for, and the payment of, Extended Benefits include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals and employers, as appropriate;

(4) Determinations, redeterminations, and appeal and review;

(5) Ability to work and availability for work, except as provided otherwise in this section;

(6) Disqualifications, including disqualifying income provisions, except as provided by paragraph (c) of this section;

(7) Overpayments, and the recovery thereof;

(8) Administrative and criminal penalties;

(9) The Interstate Benefit Payment Plan;

(10) The Interstate Arrangement for Combining Employment and Wages, in accordance with Part 616 of this chapter.

(b) *Provisions not to be applicable.* The State law and regulations shall specify those of its terms and conditions which shall not be applicable to claims for, or payment of, Extended Benefits. Among such terms and conditions shall be at least those relating to—

(1) Any waiting period;

(2) Monetary or other qualifying requirements, except as provided in § 615.4(b); and

(3) Computation of weekly and total regular compensation.

(c) *Terminating disqualifications.* A disqualification in a State law, as to any individual who voluntarily left work, was suspended or discharged for misconduct, gross misconduct or the commission or conviction of a crime, or refused an offer of or a referral to work, as provided in sections 202(a) (4) and (6) of the Act—

(1) As applied to regular benefits which are not sharable, is not subject to any limitation in sections 202(a) (4) and (6);

(2) As applied to eligibility for Extended Benefits, shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated, even though it may have been terminated on other grounds for regular benefits which are not sharable; and if the State law does not also apply this provision to the payment of what would otherwise be sharable regular benefits, the State will not be entitled to a payment under the Act and § 615.14 in regard to such regular compensation; and

(3) Will not apply in regard to eligibility for Extended Benefits in a subsequent eligibility period.

(d) *Classification and determination of job prospects.* (1) As to each individual who files an initial claim for Extended Benefits (or sharable regular compensation), the State agency shall classify the individual's prospects for obtaining work in his/her customary occupation within a reasonably short period, as "good" or "not good," and shall promptly (not later than the end of the week in which the initial claim is filed) notify the individual in writing of such classification and of the requirements applicable to the individual under the provisions of the applicable State law corresponding to section 202(a)(3) of the Act and this Part. Such requirements shall be applicable beginning with the week following the week in which the individual is furnished such written notice.

(2) If an individual is thus classified as having good prospects, but those prospects are not realized by the close of the period the State law specifies as a reasonably short period, the individual's prospects will be automatically reclassified as "not good" or classified as "good" or "not good" depending on the individual's job prospects as of that date.

(3) Whenever, as part of a determination of an individual's eligibility for benefits, an issue arises concerning the individual's failure to apply for or accept an offer of work (sections 202(a)(3)(A)(i) and (F) of the Act and paragraphs (e) and (f) of this section), or to actively engage in seeking work (sections 202(a)(3)(A)(ii) and (E) of the Act and paragraph (g) of this section), a written appealable determination shall be made which includes a finding as to the individual's job prospects at the time the issue arose. The reasons for allowing or denying benefits in the written notice of determination shall explain how the individual's job prospects relate to the decision to allow or deny benefits.

(4) If an individual's job prospects are determined in accordance with the preceding paragraph (3) to be "good," the suitability of work will be determined under the standard State law provisions applicable to claimants for regular compensation which is not sharable; and if determined to be "not good," the suitability of work will be

determined under the definition of suitable work in the State law provisions corresponding to sections 202(a)(3) (C) and (D) of the Act and this Part. Any determination or classification of an individual's job prospects is mutually exclusive, and only one suitable work definition shall be applied to a claimant as to any failure to accept or apply for work or seek work with respect to any week.

(e) *Requirement of referral to work.* (1) The State law shall provide, as required by section 202(a)(3)(F) of the Act and this Part, that the State agency shall refer every claimant for Extended Benefits to work which is "suitable work" as provided in paragraph (d)(4) of this section, beginning with the week following the week in which the individual is furnished a written notice of classification of job prospects as required by paragraphs (d)(1) and (h) of this section.

(2) To make such referrals, the State agency shall assure that each Extended Benefit claimant is registered for work and continues to be considered for referral to job openings as long as he/she continues to claim benefits.

(3) In referring claimants to available job openings, the State agency shall apply to Extended Benefit claimants the same priorities, policies, and judgments as it does to other applicants, except that it shall not restrict referrals only to work at higher skill levels, prior rates of pay, customary work, or preferences as to work or pay for individuals whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good."

(4) For referral purposes, any work which does not exceed the individual's capabilities shall be considered suitable work for an Extended Benefit claimant whose job prospects have been classified as or determined to be "not good", except as modified by this paragraph (e).

(5) For Extended Benefit claimants whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good", work shall not be suitable, and referral to a job shall not be made, if—

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

(ii) The work is not offered in writing or is not listed with the State employment service,

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

(iv) Failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law as defined in § 615.2(o)(7).

(6) In addition, if the State agency classifies or determines that an individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are "good," referral shall not be made to a job if such referral would not be made under the State law provisions applicable to claimants for regular benefits which are not sharable, and such referrals shall be limited to work which the individual is required to make a "systematic and sustained effort" to search for as defined in § 615.2(o)(8).

(7) For the purposes of the foregoing paragraphs of this paragraph (e), State law applies regarding whether members of labor organizations shall be referred to nonunion work in their customary occupations.

(8) If the State law does not also apply this paragraph (e) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(f) *Refusal of work.* (1) The State law shall provide, as required by section 202(a)(3)(A)(i) of the Act and this Part, that if an individual who claims Extended Benefits fails to accept an offer of work or fails to apply for work to which he/she was referred by the State agency—

(i) If the individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are determined to be "good," the State agency shall determine whether the work is suitable under the standard State law provisions which apply to claimants for regular compensation which is not sharable, and if determined to be suitable the individual shall be ineligible for Extended Benefits for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law; or

(ii) If the individual's prospects for obtaining work in his/her customary occupation are determined to be "not good," the State agency shall determine whether the work is suitable under the applicable State law provisions corresponding to sections 202(a)(3) (C) and (D) of the Act and paragraphs (e)(5) and (f)(2) of this section, and if determined to be suitable the individual shall be ineligible for Extended Benefits for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law.

(2) For an individual whose prospects of obtaining work in his/her customary occupation within the period specified by State law are classified or determined to be "not good," the term "suitable work" shall mean any work which is within the individual's capabilities, except that work shall not be suitable if—

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

(ii) The work is not offered in writing or is not listed with the State employment service, or

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

(iv) Failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law as defined in § 615.2(o)(7).

(3) For the purposes of the foregoing paragraphs of this paragraph (f), State law applies regarding whether members of labor organizations shall be referred to nonunion work in their customary occupations.

(4) If the State law does not also apply this paragraph (f) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(g) *Actively seeking work.* (1) The State law shall provide, as required by sections 202(a)(3) (A)(ii) and (E) of the Act and this Part, that an individual who claims Extended Benefits shall be required to make a systematic and sustained effort (as defined in § 615.2(o)(8)) to search for work which is

"suitable work" as provided in paragraph (d)(4) of this section, throughout each week beginning with the week following the week in which the individual is furnished a written notice of classification of job prospects as required by paragraphs (d)(1) and (h) of this section, and to furnish to the State agency with each claim tangible evidence of such efforts.

(2) If the individual fails to thus search for work, or to furnish tangible evidence of such efforts, he/she shall be ineligible for Extended Benefits for the week in which the failure occurred and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law.

(3)(i) A State law may provide that eligibility for Extended Benefits be determined under the applicable provisions of State law for regular compensation which is not sharable, without regard to the active search provisions otherwise applicable in paragraph (g)(1) of this section, for any individual who fails to engage in a systematic and sustained search for work throughout any week because such individual is—

(A) Serving on jury duty, or

(B) Hospitalized for treatment of an emergency or life-threatening condition.

(ii) The conditions in (i) (A) and (B) must be applied to individuals filing claims for Extended Benefits in the same manner as applied to individuals filing claims for regular compensation which is not sharable compensation.

(4) For the purposes of the foregoing paragraphs of this paragraph (g), State law applies regarding whether members of labor organizations shall be required to seek nonunion work in their customary occupations.

(5) If the State law does not also apply this paragraph (g) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(h) *Information to claimants.* The State agency shall assure that each Extended Benefit claimant (and claimant for sharable regular compensation) is informed in writing—

(1) Of the State agency's classification of his/her prospects for finding work in his/her customary occupation within the time set out in paragraph (d) as "good" or "not good,"

(2) What kind of jobs he/she may be referred to, depending on the classification of his/her job prospects,

(3) What kind of jobs he/she must be actively engaged in seeking each week depending on the classification of his/her job prospects, and what tangible evidence of such search must be furnished to the State agency with each claim for benefits, and

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

§ 615.9 Restrictions on entitlement.

(a) *Disqualifications.* If the week of unemployment for which an individual claims Extended Benefits is a week to which a disqualification for regular compensation applies, including a reduction because of the receipt of disqualifying income, or would apply but for the fact that the individual has exhausted all rights to such compensation, the individual shall be disqualified in the same degree from receipt of Extended Benefits for that week.

(b) *Additional compensation.* No individual shall be paid additional compensation and Extended Benefits with respect to the same week. If both are payable by a State with respect to the same week, the State law may provide for the payment of Extended Benefits instead of additional compensation with respect to the week. If Extended Benefits are payable to an individual by one State and additional compensation is payable to the individual for the same week by another State, the individual may elect which of the two types of compensation to claim.

(c) *Interstate claims.* An individual who files claims for Extended Benefits under the Interstate Benefit Payment Plan, in a State which is not in an Extended Benefit Period for the week(s) for which Extended Benefits are claimed, shall not be paid more than the first two weeks for which he/she files such claims.

(d) *Other restrictions.* The restrictions on entitlement specified in this section are in addition to other restrictions in the Act and this Part on eligibility for and entitlement to Extended Benefits.

§ 615.10 Special provisions for employers.

(a) *Charging contributing employers.* (1) Section 3303(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(a)(1)) does not require that Extended Benefits paid to an individual be charged to the experience rating accounts of employers.

(2) A State law may, however, consistently with section 3303(a)(1), require the charging of Extended Benefits paid to an individual; and if it does, it may provide for charging all or any portion of such compensation paid.

(3) Sharable regular compensation must be charged as all other regular compensation is charged under the State law.

(b) *Payments by reimbursing employers.* If an employer is reimbursing the State unemployment fund in lieu of paying contributions pursuant to the requirements of State law conforming with sections 3304(a)(6)(B) and 3309(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(6)(B) and 3309(a)(2)), the State law shall require the employer to reimburse the State unemployment fund for not less than 50 percent of any sharable compensation that is attributable under the State law to service with such employer; and as to any compensation which is not sharable compensation under § 615.14, the State law shall require the employer to reimburse the State unemployment fund for 100 percent, instead of 50 percent, of any such compensation paid.

§ 615.11 Extended Benefit Periods.

(a) *Beginning date.* Except as provided in paragraph (d) of this section, an Extended Benefit Period shall begin in a State on the first day of the third calendar week after a week for which there is a State "on" indicator in that State.

(b) *Ending date.* Except as provided in paragraph (c) of this section, an Extended Benefit Period in a State shall end on the last day of the third week after the first week for which there is a State "off" indicator in that State.

(c) *Duration.* An Extended Benefit Period which becomes effective in any State shall continue in effect for not less than 13 consecutive weeks.

(d) *Limitation.* No Extended Benefit Period may begin in any State by reason of a State "on" indicator before the 14th week after the ending of a Prior Extended Benefit Period with respect to such State.

§ 615.12 Determination of "on" and "off" indicators.

(a) *Standard State indicators.* (1) There is a State "on" indicator in a State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the

rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Equalled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years, and

(ii) Equalled or exceeded 5.0 percent.

(2) There is a State "off" indicator in a State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Was less than 120 percent of the average of such rates for the corresponding 13 week periods ending in each of the preceding two calendar years, or

(ii) Was less than 5.0 percent.

(3) The standard State indicators in this paragraph (a) shall apply to weeks beginning after September 25, 1982.

(b) *Optional State indicators.* (1)(i) A State may, in addition to the State indicators in paragraph (a) of this section, provide by its law that there shall be a State "on" indicator in the State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law equalled or exceeded 6.0 percent even though it did not meet the 120 percent factor required under paragraph (a).

(ii) A State which adopts the optional State indicator must also provide that, when it is in an Extended Benefit Period, there will not be an "off" indicator until (A) the State rate of insured unemployment is less than 6.0 percent, and (B) either its rate of insured unemployment is less than 5.0 percent or is less than 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years.

(2) The optional State indicators in this paragraph (b) shall apply to weeks beginning after September 25, 1982.

(c) *Computation of rate of insured unemployment.*—(1) *Equation.* Each week the State agency head shall calculate the rate of insured unemployment under the State law (not seasonally adjusted) for purposes of determining the State "on" and "off" and "no change" indicators. In making such calculations the State agency head shall use a fraction, the numerator of which shall be the weekly average number of weeks claimed in claims filed (not seasonally adjusted) in the State in the 13-week period ending with the week for which the determination is made, and the denominator of which shall be the average monthly employment covered by the State law for the first four of the last six calendar quarters ending before the close of the 13-week period. The quotient obtained is to be computed to four decimal places, and is not otherwise rounded, and is to be expressed as a percentage by multiplying the resultant decimal fraction by 100.

(2) *Counting weeks claimed.* To determine the average number of weeks claimed in claims filed to serve as the numerator under paragraph (c)(1), the State agency shall include claims for all weeks for regular compensation, including claims taken as agent State under the Interstate Benefit Payment Plan. It shall exclude claims—

(i) For Extended Benefits under any State law,

(ii) For additional compensation under any State law, and

(iii) Under any Federal law except joint claims which combine regular compensation and compensation payable under 5 U.S.C. Chapter 85.

(3) *Method of computing the State 120 percent factor.* The rate of insured unemployment for a current 13-week period shall be divided by the average of the rates of insured unemployment for the corresponding 13-week periods in each of the two preceding calendar years to determine whether the rate is equal to 120 percent of the average rate for the two years. The quotient obtained shall be computed to four decimal places and not otherwise rounded, and shall be expressed as a percentage by multiplying the resultant decimal fraction by 100. The average of the rates for the corresponding 13-week periods in each of the two preceding calendar years shall be one-half the sum of such rates computed to four decimal places and not otherwise rounded. To determine which are the corresponding weeks in the preceding years—

(i) The weeks shall be numbered starting with week number 1 as the first week ending in each calendar year.

(ii) The 13-week period ending with any numbered week in the current year shall correspond to the period ending with that same numbered week in each preceding year.

(iii) When that period in the current year ends with week number 53, the corresponding period in preceding years shall end with week number 52 if there is no week number 53.

(d) *Amendment of State indicator rates.* (1) Because figures used for determinations under this section may contain errors and because it is not practical to apply any correction in a State "on" or "off" or "no change" indicator retroactively either to recover amounts paid or to adjudicate claims for past periods in which claimants failed to make the required active search for work, any determination by the head of a State agency of an "on" or "off" or "no change" indicator shall not be corrected more than three weeks after the close of the week to which it applies. If any figure used in the computation of a rate of insured unemployment is later found to be wrong, the correct figure shall be used to redetermine the rate of insured unemployment and of the 120 percent factor for that week and all subsequent weeks, but no determination of previous "on" or "off" or "no change" indicator shall be affected unless the redetermination is made within the time the indicator may be corrected under the first sentence of this paragraph (d)(1). Any change hereunder shall be subject to the concurrence of the Department as provided in paragraph (e) of this section.

(2) Any determination of the rate of insured unemployment and its effect on an "on" or "off" or "no change" indicator may be challenged by appeal or by other proceedings, as shall be provided by State law, but the implementation of any change in the indicator from one week to another shall not be stayed or postponed. In a hearing on any such challenge the issue may be limited to the accuracy of the determination of the rate of insured unemployment. If an error in that rate affecting the "on" or "off" or "no change" indicator is discovered in such a hearing or other proceeding, its retroactive effect shall be limited as provided in paragraph (d)(1).

(e) *Notice to Secretary.* Within 10 calendar days after the end of any week with respect to which the head of a State agency has determined that there is an "on," or "off," or "no change" indicator in the State, the head of the State agency shall notify the Department of the determination. The notice shall state clearly the State agency head's determination of the specific week for which there is a State "on" or "off" or "no change" indicator. The notice shall include also the State agency head's findings supporting the determination, with a certification that the findings are made in accordance with the requirements of this § 615.15. Determinations and findings made as provided in this section shall be accepted by the Department, but the head of the State agency shall comply with such provisions as the Department may find necessary to assure the

correctness and verification of notices given under this paragraph. A notice shall not become final for purposes of the Act and this part until such notice is accepted by the Department.

§ 615.13 Announcement of the beginning and ending of Extended Benefit Periods.

(a) *State indicators.* Upon receipt of the notice required by § 615.12(e) which is acceptable to the Department, the Department shall publish in the **Federal Register** a notice of the State agency head's determination that there is an "on" or an "off" indicator in the State, as the case may be, the name of the State and the beginning or ending of the Extended Benefit Period, whichever is appropriate. The Department shall also notify appropriate news media, the heads of all other State agencies, and the Regional Administrators of the Employment and Training Administration of the State agency head's determination of such State "on" or "off" indicator and of its effect.

(b) *Publicity by State.* Whenever a State agency head determines that there is an "on" indicator in the State by reason of which an Extended Benefit Period will begin in the State, or an "off" indicator by reason of which an Extended Benefit Period in the State will end, the head of the State agency shall promptly announce the determination through appropriate news media in the State and notify the Department in accordance with § 615.12(e). Such announcement shall include the beginning or ending date of the Extended Benefit Period, whichever is appropriate. In the case of an Extended Benefit Period that is about to begin, the announcement shall describe clearly the unemployed individuals who may be eligible for Extended Benefits during the period, and in the case of an Extended Benefit Period that is about to end, the announcement shall also describe clearly the individuals whose entitlement to Extended Benefits will be terminated.

(c) *Notices to individuals.* (1) Whenever there has been a determination that an Extended Benefit Period will begin in a State, the State agency shall provide prompt written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not end prior to the beginning of the Extended Benefit Period, and who exhausted all rights under the State law to regular compensation before the beginning of the Extended Benefit Period.

(2) The State agency shall provide such notice promptly to each individual who begins to claim sharable regular benefits or who exhausts all rights under the State law to regular compensation during an Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

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

(4) Whenever there has been a determination that an Extended Benefit Period will end in a State, the State agency shall provide prompt written notice to each individual who is currently filing claims for Extended Benefits of the forthcoming end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits.

§ 615.14 Payments to States.

(a) *Sharable compensation.* (1) The Department shall promptly upon receipt of a State's report of its expenditures for a calendar month reimburse the State in the amount of the sharable compensation the State is entitled to receive under the Act and this Part.

(2) The Department may instead advance to a State for any period not greater than one day the amount the Department estimates the State will be entitled to be paid under the Act and this Part for that period.

(3) Any payment to a State under this section shall be based upon the Department's determination of the amount the State is entitled to be paid under the Act and this Part, and such amount shall be reduced or increased, as the case may be, by any amount by which the Department finds that a previous payment was greater or less than the amount that should have been paid to the State.

(4) Any payment to a State pursuant to this paragraph (a) shall be made by a transfer from the extended unemployment compensation account in the Unemployment Trust Fund to the account of the State in such Fund, in accordance with section 204(e) of the Act.

(b) *Payments not to be made to States.* Because a State law must contain provisions fully consistent with sections 202 and 203 of the Act, the Department shall make no payment under paragraph (a) of this section, whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1986—

(1) In respect of any regular or extended compensation paid to any individual for any week if the State does not apply—

(i) The provisions of the State law required by section 202(a)(3) and this Part, relating to failure to accept work offered or to apply for work or to actively engage in seeking work, as to weeks beginning after October 31, 1981, except for any State which the State legislature did not meet in 1981 as to weeks beginning after October 1, 1982 or the provisions of State law required by section 202(a)(4) and this Part, relating to terminating a disqualification, as to weeks beginning after March 31, 1981;

(ii) The provisions of the State law required by section 202(a)(5) and this Part, relating to qualifying employment, as to weeks beginning after September 25, 1982; or

(2) In respect of any regular or extended compensation paid to any individual for any week which was not payable by reason of the provision of the State law required by section 202(c) and this Part, as to weeks which begin after May 31, 1981, or May 31, 1982, as determined by the Department with regard to each State.

(c) *Payments not to be reimbursed.* The Department shall make no payment under paragraph (a) of this section, whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1986, in respect of any regular or extended compensation paid under a State law—

(1) As provided in section 204(a)(1) of the Act and this Part, if the payment made was not sharable extended compensation or sharable regular compensation;

(2) As provided in section 204(a)(2)(A) of the Act, if the State is entitled to reimbursement for the payment under the provisions of any Federal law other than the Act;

(3) As provided in section 204(a)(2)(B) of the Act, if for the first week in an individual's eligibility period with respect to which Extended Benefits or sharable regular benefits are paid to the individual, that first week begins after December 5, 1980, and the State law provides for the payment (at any time or under any circumstances) of regular compensation to any individual for the first week of unemployment in any such individual's benefit year; except that—

(i) In the case of a State with respect to which the Department finds that legislation is required in order to end the payment (at any time or under any circumstances) of regular compensation for any such first week of unemployment, this paragraph (c)(3)

shall not apply to the first week in an individual's eligibility period which began before the end of the first regularly scheduled session of the State legislature that ends after January 4, 1981, as determined by the Department; and

(ii) In the case of a State law which is changed so that regular compensation is not paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall not apply to any week which begins after the effective date of such change in the State law; and

(iii) In the case of a State law which is changed so that regular compensation is paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall apply to all weeks which begin after the effective date of such change in the State law;

(4) As provided in section 204(a)(2)(C) of the Act and this Part, for any week with respect to which Extended Benefits are not payable because of the payment of trade readjustment allowances, as provided in section 233(d) of the Trade Act of 1974, and § 615.7(d). This paragraph (c)(4) applies to any week which begins after October 31, 1982, or 1983, as determined by the Department in regard to each State;

(5) As provided in section 204(a)(2)(D) of the Act and this Part, if the State does not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount, for the 50 percent Federal share of the amount by which sharable regular or Extended Benefits paid to any individual exceeds the nearest lower full dollar amount. This paragraph (c)(5) shall apply to any sharable regular compensation or Extended Benefits paid to individuals whose eligibility periods begin on or after October 1, 1983, unless a later date, as determined by the Department, applies in a particular State under the grace period of section 191(b)(2) of Pub. L. 97-248;

(6) As provided in section 204(a)(3) of the Act, to the extent that such compensation is based upon employment and wages in service performed for governmental entities or instrumentalities to which section 3306(c)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(c)(7)) applies, in the proportion that wages for such service in the base period bear to the total base period wages;

(7) If the payment made was not sharable extended compensation or sharable regular compensation because the payment was not consistent with the requirements of—

(i) Section 202(a)(3) of the Act, and § 615.8 (e), (f), or (g);

(ii) Section 202(a)(4) of the Act, and § 615.8(c); or

(iii) Section 202(a)(5) of the Act, and § 615.4(b);

(8) If the payment made was not sharable extended compensation or sharable regular compensation because there was not in effect in the State an Extended Benefit Period in accord with the Act and this Part; or

(9) For any week with respect to which the claimant was either ineligible for or not entitled to the payment.

(d) *Effectuating authorization for reimbursement.* (1) If the Department believes that reimbursement should not be authorized with respect to any payments made by a State that are claimed to be sharable compensation paid by the State, because the State law does not contain provisions required by the Act and this Part, or because such law is not interpreted or applied in rules, regulations, determinations or decisions in a manner that is consistent with those requirements, the Department may at any time notify the State agency in writing of the Department's view. The State agency shall be given an opportunity to present its views and arguments if desired.

(2) The Department shall thereupon decide whether the State law fails to include the required provisions or is not interpreted and applied so as to satisfy the requirements of the Act and this Part. If the Department finds that such requirements are not met, the Department shall notify the State agency of its decision and the effect thereof on the State's entitlement to reimbursement under this section and the provisions of section 204 of the Act.

(3) Thereafter, the Department shall not authorize any payment under paragraph (a) of this section in respect of any sharable regular or extended compensation if the State law does not contain all of the provisions required by sections 202 and 203 of the Act and this Part, or if the State law, rules, regulations, determinations or decisions are not consistent with such requirements, or which would not have been payable if the State law contained the provisions required by the Act and this Part or if the State law, rules, regulations, determinations or decisions had been consistent with such requirements. Loss of reimbursement for such compensation shall begin with the date the State law was required to contain such provisions, and shall continue until such time as the Department finds that such law, rules and regulations have been revised or the interpretations followed pursuant to such determinations and decisions have been overruled and payments are made or denied so as to accord with the Federal law requirements of the Act and this Part, but no reimbursement shall be authorized with respect to any payment that did not fully accord with the Act and this Part.

(4) A State agency may request reconsideration of a decision issued pursuant to paragraph (d)(2) above, within 10 calendar days of the date of such decision, and shall be given an opportunity to present views and arguments if desired.

(5) Concurrence of the Department in any State law provision, rule, regulation, determination or decision shall not be presumed from the absence of notice issued pursuant to this section or from a certification of the State issued pursuant to section 3304(c) of the Internal Revenue Code of 1986.

(6) Upon finding that a State has made payments for which it claims reimbursement that are not consistent with the Act or this Part, such claim shall be denied; and if the State has already been paid such claim in advance or by reimbursement, it shall be required to repay the full amount to the Department. Such repayment may be made by transfer of funds from the State's account in the Unemployment Trust Fund to the Extended Unemployment Compensation Account in the Fund, or by offset against any current advances or reimbursements to which the State is otherwise entitled, or the amount repayable may be recovered for the Extended Unemployment Compensation Account by other means and from any other sources that may be available to the United States or the Department.

(e) *Compensation under Federal unemployment compensation programs.* The Department shall promptly reimburse each State which has paid sharable compensation based on service covered by the UCFE and UCX Programs (Parts 609 and 614 of this chapter, respectively) pursuant to 5 U.S.C. Chapter 85, an amount which represents the full amount of such sharable compensation paid under the State law, or may make advances to the State. Such amounts shall be paid from the Federal Employees Compensation Account established for those programs, rather than from the Extended Unemployment Compensation Account.

(f) *Combined-wage claims.* If an individual was paid benefits under the Interstate Arrangement for Combining Employment and Wages (Part 616 of this

chapter) any payment required by paragraph (a) of this section shall be made to the States which contributed the wage credits.

(g) *Interstate claims.* Where sharable compensation is paid to an individual under the provisions of the Interstate Benefit Payment Plan, any payment required by paragraph (a) of this section shall be made only to the liable State.

§ 615.15 Records and reports.

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

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

(c) *Weekly report of Extended Benefit data.* Each State shall file with the Department within 10 calendar days after the end of each calendar week a weekly report entitled ETA 539, Extended Benefit Data. The report shall include:

(1) The data reported on the form ETA 539 for the week ending (date). Week-ending dates shall always be the Saturday ending date of the calendar week beginning at 12:01 a.m. Sunday and ending 12:00 p.m. Saturday.

(2)(i) The number of continued weeks claimed for regular compensation in claims filed during the week ending (date). The report shall include intrastate continued weeks claimed and interstate continued weeks claimed (taken as agent State) but shall exclude interstate continued weeks claimed (received as liable State) and continued weeks claimed for regular compensation filed solely under 5 U.S.C. Chapter 85; and

(ii) The report of the number of continued weeks claimed filed in the State for regular compensation shall not be adjusted for seasonality.

(3) The average weekly number of weeks claimed in claims filed in the most recent calendar week and the immediately preceding 12 calendar weeks.

(4) The rate of insured unemployment for the current 13-week period.

(5) The average of the rates of insured unemployment in corresponding 13-week periods in the preceding two years.

(6) The current rate of insured unemployment as a percentage of the average of the rates in the corresponding 13-week periods in the preceding two years.

(7) The 12 month average monthly employment covered by the State law for the first 4 of the last 6 complete calendar quarters ending prior to the end of the last week of the current 13-week period to which the insured unemployment data relate. Such covered employment shall exclude Federal civilian and military employment covered by 5 U.S.C. Chapter 85.

(8) The date that a State Extended Benefit Period begins or ends, or a report that there is no change in the existing Extended Benefit Period status.

(d) *Methodology.* The State agency head shall submit to the Department, for approval, the method used to identify and select the weeks claimed which are used in the determination of an "on" or "off" or "no change" indicator. Any change proposed in the method of identification and selection of such weeks claimed constitutes a new plan which must be submitted to and approved by the Department prior to implementing the new plan.

(Approved by the Office of Management and Budget under Control Number 1205–0028).

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