

Regulatory Analysis Form

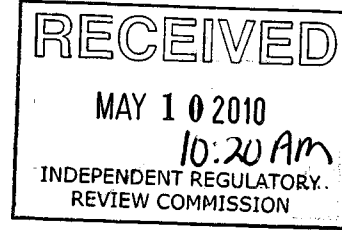
(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE



(1) Agency: Department of Labor and Industry (Department)

Office of Unemployment Compensation Benefits (OUCB)

(2) Agency Number: 12

Identification Number: 74

IRRC Number:

2846

(3) Short Title: 34 PA Code, Part II, Subpart A, Unemployment Compensation Chapter 65, Employee Provisions

(4) PA Code Cite: 34 PA Code § 65.1 et seq.

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Sean F. Creegan, Deputy Chief Counsel, 717-787-4186

Secondary Contact: Craig Pontz, Assistant Director, OUCB, 717-783-0605

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Craig Pontz, Assistant Director, OUCB, 6th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; (717) 783-0605; fax: (717) 772-0344; cpontz@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of this rulemaking, which covers 24 sections of the Department's regulations, is to update the regulations to conform to current law and practice.

This rulemaking will repeal 11 sections of Chapter 65 and partially repeal additional regulations under circumstances such as the following: where the provision is obsolete or contains obsolete references, is inconsistent with the Unemployment Compensation (UC) Law (Law) or is superseded by a subsequent statute; in order to consolidate regulations with similar subject matter; or where the provision merely repeats statutory language.

Topics covered by this rulemaking include: ongoing work registration, filing UC applications and claims by telephone and the Internet, when appeals and claims are filed and extended filing, and determination of full-time work.

(9) Include a schedule for review of the regulation including:	Within 30 days following publication of the <u>proposed rulemaking</u> .
A. The date by which the agency must receive public comments:	
B. The date or dates on which public meetings or hearings will be held:	<u>N/A</u>
C. The expected date of promulgation of the proposed regulation as a final-form regulation:	<u>Unknown at this time.</u>
D. The expected effective date of the final-form regulation:	<u>*</u>
E. The date by which compliance with the final-form regulation will be required:	<u>*</u>
F. The date by which required permits, licenses or other approvals must be obtained:	<u>*</u>

* The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The following regulations, as promulgated, amended or rescinded by this rulemaking, apply to weeks of unemployment ending on or after the regulations' effective date: §§ 65.11, 65.12, 65.13, 65.14, 65.15, 65.32, 65.33, 65.43, 65.43.1(a), 65.43.1(b), 65.43.1(d), 65.43.1(f), 65.43.1(i) and 65.73. The following regulations, as amended or rescinded by this rulemaking, apply to claims for compensation filed on or after the regulations' effective date: §§ 65.31 and 65.41. The following regulations, promulgated or as amended by this rulemaking, apply to applications for benefits filed on or after the regulations' effective date: §§ 65.41, 65.42, 65.43.1(c), 65.43.1(g), 65.43.1(i) and 65.56. Amended § 65.22 applies to an offer of work made on or after the amendment's effective date. Amended § 65.102 applies to weeks of unemployment ending on or after December 16, 2005. Section 65.56 applies to a request made on or after the section's effective date to withdraw an application for benefits.

Regulatory Analysis Form

(10) Provide the schedule for continual review of the regulation.

A review schedule is not needed, as the regulations will be monitored on an ongoing basis in the day-to-day administration of the UC program.

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The regulation is proposed under Section 201(a) of the Law, 43 P.S. § 761(a), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the Law.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Federal law does not mandate this rulemaking.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

With the exception of the regulations concerning retirement pensions and reasonable assurance, which were amended in 1998 and 2003, respectively, and the benefit table which is modified annually, the regulations in Title 34, Part II, Subpart A were adopted or most recently amended between 1969 and 1980. As a result of subsequent changes to the Law and procedure, many of the existing UC regulations are obsolete, inconsistent with the Law, and / or lack provisions needed to implement the Law. This rulemaking is necessary to modernize the UC regulations in Chapter 65 to conform to the current Law and Department procedures. As a result of this effort, the regulations will provide more up-to-date, complete and accurate guidance for both employers and claimants.

For example, the existing regulations in Chapter 65 reflect former procedures whereby a claimant would file an application for benefits and claims for compensation in person at a local Department office. Technological advances have allowed the Department to provide more convenient services to unemployed workers. Today, an individual may file an application for benefits via the Internet or by telephone, mail or fax, and may file claims for weeks of unemployment by Internet or telephone. Also, claimants file claims bi-weekly. Each bi-weekly claim covers the preceding 2 weeks. The present regulations, however, correspond to the former procedure in which a claim was filed every week, for the previous week. This rulemaking will update the Department's regulations to conform to the ways in which the Department conducts UC related business today.

Regulatory Analysis Form

The Law provides that a claimant shall register for work in order to be eligible for compensation. Pursuant to the UC regulations, a claimant fulfills this requirement by filing an application for benefits. However, the current regulations also provide that a work registration lapses in certain circumstances and must be renewed. This is a technical and little known provision that can prejudice a claimant's eligibility. The Department is amending the regulations to provide that a work registration remains effective throughout the benefit year.

Pursuant to this rulemaking, regulations that are obsolete will be rescinded or amended to reflect current procedure. Regulatory provisions that are inconsistent with current law are being amended or repealed. Regulatory provisions that address similar subject matter are being consolidated. Regulatory guidance is being provided on issues that are not covered by the existing regulations. As a result, the regulations will provide more up-to-date, complete and accurate guidance regarding the UC program. Therefore, both claimants and employers will benefit from the rulemaking. These are substantial populations. There are approximately 280,000 Pennsylvania employers, and UC claimants file approximately 617,000 new applications for benefits each year.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by the proposed regulations.

(16) List the persons, groups or entities that will be required to comply with the regulation.

Approximate the number of people who will be required to comply.

All UC claimants will be required to comply with the amended regulations.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The majority of this rulemaking concerns procedural issues, such as the methods and time for filing UC applications and claims. Although the rulemaking contains procedural requirements, these do not affect the amount or duration of benefits available to the claimant under the Law. Moreover, some of the procedural provisions of this rulemaking codify current practices. For these reasons, the new or amended regulations concerning procedural matters would not involve costs or savings for claimants or employers.

With regard to the few provisions of this rulemaking that address substantive matters, either they codify existing application of the Law or the Department is not able to estimate any cost or savings to the regulated community that may be associated with these provisions.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking will have no direct impact on local governments. (However, to the extent that a local government is an employer it must comply with the Law and corresponding regulations.)

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The majority of this rulemaking concerns procedural issues, such as the methods and time for filing UC applications and claims. Although the rulemaking contains procedural requirements, these do not affect the amount or duration of benefits available to the claimant under the Law. Moreover, some of the procedural provisions of this rulemaking codify current practices. For these reasons, the new or amended regulations concerning procedural matters would not involve costs or savings for the UC Fund.

With regard to the few provisions of this rulemaking that address substantive matters, either they codify existing application of the Law or the Department is not able to estimate any cost or savings to the UC Fund associated with these provisions.

Regulatory Analysis Form

Because this rulemaking will supply more current, accurate and complete guidance regarding UC-related procedures and some substantive issues, the Department anticipates that fewer issues requiring adjudication will arise. The Department may experience some modest savings in administrative costs in this regard. However, there is no way to quantify the savings that may be realized.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0					
Local Government						
State Government	0					
Total Savings						
COSTS:						
Regulated Community	0					
Local Government						
State Government	0					
Total Costs						
REVENUE LOSSES:						
Regulated Community	0					
Local Government						
State Government	0					
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
	2004	2005	2006	2007
UC Program Expenditures (UC Benefits paid, in thousands) (Fund 64, Benefit Payment Fund)	\$2,118,405	\$1,998,637	\$2,084,260	\$2,320,529

Regulatory Analysis Form

UC Administrative Expenditures (in thousands) (Fund 26, Administration Fund)	\$146,733	\$139,537	\$126,595	\$124,441

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

As indicated in items 13 and 14, UC claimants and employers will benefit from this rulemaking. No one is expected to be adversely affected by the amended regulations.

As indicated in items 17, 18 and 19, no costs or savings are expected for the regulated community, local governments or state agencies other than the Department. The Department may experience some savings in administrative costs as a result of this rulemaking.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Mr. Geoffrey D. Moomaw, Partner
Interstate Tax Service Bureau
P.O. Box 247
Camp Hill, PA 17001-0247

Heiss, Gibbons and Company, Inc.
Attn: Mr. Kevin Allison, Vice-President
7 East Main Street
Mechanicsburg, PA 17055

AFL-CIO of Pennsylvania
Mr. William George, President
231 State St
Harrisburg, PA 17101-1110

Community Legal Services, Inc.
Attn: Ms. Sharon Dietrich
1424 Chestnut Street
Philadelphia, PA 19102-2505

Pennsylvania Chamber of Business and Industry
Attn: Brian Kelly, Director, Government Affairs
417 Walnut St
Harrisburg, PA 17101-1918

Philadelphia Unemployment Project
Attn: Mr. John Dodds, Executive Director
1201 Chestnut St, Room 702
Philadelphia, PA 19107-4123

MonValley Unemployed Committee
Attn: Mr. Barney Oursler
120 E. 9th Avenue
Homestead, PA 15120-1602

Friends of Farmworkers, Inc.
Attn: Karen Detamore, Executive Director
924 Cherry Street, 4th Floor
Philadelphia, PA 19107-2411

National Federation of Independent Businesses
Attn: Kevin Shivers, Pennsylvania State Director
301 Chestnut Street, Suite 101

Regulatory Analysis Form

Harrisburg, PA 17101

The above were advised that, in light of the significant changes in the way the UC program is being administered, the Department was contemplating amendments to Title 34 of the Pennsylvania Code. These parties were identified as having an interest in the amendments and were invited to provide input and comments for the Department's consideration. The Department received responses from Interstate Tax Service Bureau, Pennsylvania Chamber of Business and Industry and Community Legal Services, Inc.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Because the purpose of this rulemaking is to update existing regulations to reflect the current Law and practice, the only regulatory scheme available is the one chosen; that is, amendments to those regulations.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Under current procedures, a claimant may file an application for Pennsylvania UC via the Internet or by telephone, mail or fax, and may file claims for weeks of unemployment by Internet or telephone. These methods to claim benefits from the Commonwealth are consistent with the UC procedures in the other states.

As of March 2006, of 51 state UC agencies, only three require a claimant to report in person to file an application for benefits, and one allows a claimant to mail an application in lieu of a personal appearance. The remaining states take benefit applications by telephone and/or Internet. No state UC agency requires a claimant to report in person to file claims for weeks of unemployment. Three states require claimants to file claims by mail. Fourteen states allow claims to be filed by telephone and the remainder allow claims to be filed via the Internet, by telephone or in person.

This rulemaking will not change the ways in which UC applications and claims currently are filed, or the time for filing applications and claims. Rather, it will amend the regulations to conform to existing procedures.

Regulatory Analysis Form

The majority of this rulemaking concerns procedural issues. Only a few provisions of this rulemaking are substantive. The subject matter of the proposed new and amended regulations does not involve issues that would impact on the economic competitiveness of the Commonwealth.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes, this rulemaking will amend existing regulations of the promulgating agency, the Department of Labor and Industry, as follows:

The following regulations are being abolished:

- § 65.1 [Definitions] Reserved
- § 65.12 [Registration renewals] Reserved
- § 65.13 [Predated claims] Reserved
- § 65.15 [Claims filed in other states] Reserved
- § 65.21 [Disqualification for benefits] Reserved
- § 65.31 [Filing] Reserved
- § 65.32 [Week of unemployment] Reserved
- § 65.33 [Predating] Reserved
- § 65.35 [Ineligibility] Reserved
- § 65.44 [Information as to eligibility] Reserved
- § 65.117 [Appeals] Reserved

The following regulations are being amended:

- § 65.11 [Effective period] Work registration; effective period
- § 65.14 Additional information
- § 65.22 Applicable rules
- § 65.41 [Procedure] Filing methods
- § 65.42 [Date of filing] Application for benefits – effective date
- § 65.43 [Places of filing] Claims for compensation – when to file
- § 65.63 Filing of appeals
- § 65.102 Application of the deduction
- § 65.156 Reserve accounts of employers

The following regulations are being added:

- § 65.43.1 Extended filing
- § 65.56 Withdrawing an application for benefits
- § 65.73 Full time work
- § 65.139 Definitions

Regulatory Analysis Form

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

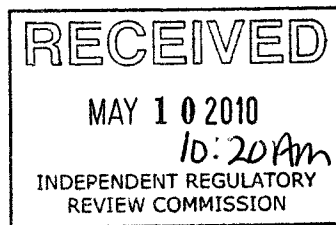
This rulemaking will not change, or impose new, reporting, record keeping or paperwork requirements on claimants or employers. However, existing UC program forms may be amended, at nominal cost, to collect information that may become relevant to a claimant's eligibility under this rulemaking.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)



Do Not Write In This Space

Copy below is hereby approved as to Form and legality. Attorney General.

By: *Angela M. Elliott*
DEPUTY ATTORNEY GENERAL

JAN 29 2009

DATE OF APPROVAL

Check if applicable.
Copy not approved.
Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF LABOR & INDUSTRY
(AGENCY)

Document/Fiscal Note No. 12-74

Date of Adoption: _____

By: *Sandi Vito*
SANDI VITO

Title: Acting Secretary Of Labor & Industry
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or independent Agencies

By: *Andrew C. Clark*
DEC 24 2008

DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(~~Strike inapplicable title~~)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

PROPOSED RULEMAKING

TITLE 34. LABOR AND INDUSTRY

PART II, SUBPART A. UNEMPLOYMENT COMPENSATION

CHAPTER 65. EMPLOYEE PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

SUBCHAPTER B. PREREQUISITES FOR ELIGIBILITY

SUBCHAPTER C. APPLICATION PROCEDURE

SUBCHAPTER D. PARTIAL UNEMPLOYMENT AND DECEASED OR INCOMPETENT CLAIMANTS

SUBCHAPTER E. ELIGIBILITY IN CONJUNCTION WITH OTHER PAYMENTS

SUBCHAPTER F. COMPUTATIONS

SUBCHAPTER G. INTERSTATE CLAIMS

SUBCHAPTER H. ALLOWANCES FOR DEPENDENTS

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY OFFICE OF UNEMPLOYMENT COMPENSATION BENEFITS

34 PA. CODE CH. 65

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits (OUCB), proposes new and amended regulations, as set forth in Annex A, for inclusion in Title 34, Labor and Industry; Part II, Subpart A. Unemployment Compensation; Chapter 65, Employee Provisions.

A. Statutory Authority

These regulations are proposed under section 201(a) of the Unemployment Compensation Law (Law) (43 P.S. § 761(a)) which authorizes the Department to promulgate and amend rules and regulations necessary to administer the Law.

B. Background and Description of Proposed Rulemaking

The purpose of this rulemaking, which covers 24 sections of the Department's regulations, is to update the regulations to conform to current law and practice.

This rulemaking will repeal 11 sections of Chapter 65 and partially repeal additional regulations. The Department is repealing provisions that are obsolete, inconsistent with the Law, or superseded by a subsequent statutory enactment. In some cases, the Department is repealing a provision and combining its content with other regulatory provisions, in order to consolidate regulations with similar subject matter. In cases where a regulation is superfluous because it merely repeats an existing statutory provision, the regulation is proposed for repeal or amended to refer to the statute.

References to obsolete subdivisions of the Department are being removed or replaced with references to the current agency or the Department generally. References to specific forms, some of which are outdated, are being removed wherever possible.

In addition to the foregoing types of changes that occur throughout the rulemaking, there are particular changes as described below.

§§ 65.11, 65.12 and 65.13 – The Law provides that a claimant shall register for work in order to be eligible for compensation. Pursuant to existing regulations, a claimant fulfills this requirement by filing an application for benefits. However, the current regulations

also provide that a work registration lapses under certain circumstances and must be renewed. This is a technical and little known provision that may prejudice a claimant's eligibility. Section 65.11 is amended to provide that a work registration created by an application for benefits remains effective throughout the benefit year. Language in §§ 65.11 and 65.12 providing for the lapse and renewal of a work registration is rescinded. Section 65.13, which provides for retroactive registration renewals, is no longer necessary and is rescinded.

§ 65.14 – The language of this regulation is revised to state that a claimant shall provide all information required by the Department to facilitate reemployment.

§§ 65.31 and 65.41 – Currently, these regulations provide that claimants shall file applications for benefits and claims for compensation in person, and on paper forms, at a local Department office. In their present form these regulations reflect outdated procedures. The Department no longer requires claimants to appear in person to conduct UC-related business. Therefore, existing §§ 65.31 and 65.41(a) are being rescinded and replaced with amended § 65.41. As amended, § 65.41 provides that a claimant may file an application for benefits by telephone, internet, U.S. mail, or fax transmission and may file a claim for compensation by telephone or the internet.

§ 65.42 - As amended, this regulation specifies that that an application for benefits is effective on the first day of the week in which the application is filed or deemed filed under § 65.43.1.

§§ 65.32 and 65.43 – Section 65.32 reflects an outdated procedure in which a claim for compensation was filed every week. That is, a claim for compensation had to be filed during the week immediately following the week of unemployment being claimed. This regulation is rescinded and replaced with amended § 65.43. As amended, § 65.43 reflects the current procedure in which claims are filed bi-weekly and each bi-weekly pair of claims covers the preceding two weeks.

§ 65.43.1 – Currently, § 65.33 provides that a claim for compensation may be filed late under certain circumstances, and §§ 65.41 and 65.42(a) set forth the circumstances in which an application for benefits may be filed late. This rulemaking consolidates the provisions regarding late filing of claims and applications in new § 65.43.1. This new section contains provisions similar to the regulations it replaces. It also reflects circumstances that may prevent a claimant from filing a timely application or claim under current procedures, in which applications and claims are taken by telephone, internet and fax transmission.

§ 65.56 – This new regulation specifies circumstances under which the Department may approve a claimant's request to withdraw an application for benefits and cancel the corresponding benefit year.

§ 65.73 – Pursuant to section 4(u) of the Law (43 P.S. § 753(u)), a claimant may be “unemployed” for purposes of eligibility for UC if he is working “less than his full-time work.” Neither the Law nor the regulations define full-time work for purposes of section 4(u). As a result, this provision has been applied inconsistently. The new regulation at § 65.73 will specify how a claimant’s full-time work is determined.

C. *Affected Persons*

The proposed rulemaking would affect all persons claiming UC benefits. Approximately 617,000 new applications for benefits are filed each year.

D. *Fiscal Impact*

Commonwealth and the Regulated Community – The majority of this rulemaking concerns procedural matters, such as the methods and time for filing UC applications and claims. Although the rulemaking contains procedural requirements, these do not affect the amount or duration of benefits available to the claimant under the Law. Also, some of the procedural provisions of this rulemaking codify current practice. For these reasons the new and amended regulations addressing procedures would not involve any fiscal impact to the UC Fund or the regulated community. Only a small portion of this rulemaking involves substantive matters. Either these provisions reflect the current application of the Law, in which event there would be no fiscal impact, or the Department is unable to estimate the amount of any fiscal impact that may occur.

Political Subdivisions.- This rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the Law.

General Public – This rulemaking does not affect the general public.

E. *Paperwork Requirement*

This rulemaking will not impose additional paperwork requirements on the regulated community.

F. *Sunset Date*

The regulation will be monitored through practice and application. Thus, no sunset date is designated.

G. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The following regulations, as promulgated, amended or rescinded by this rulemaking, apply to weeks of unemployment ending on or after the regulations' effective date: §§65.11, 65.12, 65.13, 65.14, 65.15, 65.32, 65.33, 65.43, 65.43.1(a), 65.43.1(b), 65.43.1(d), 65.43.1(f), 65.43.1(i) and 65.73. The following regulations, as amended or rescinded by this rulemaking, apply to claims for compensation filed on or after the regulations' effective date: §§65.31 and 65.41. The following regulations, promulgated or as amended by this rulemaking, apply to applications for benefits filed on or after the regulations' effective date: §§65.41, 65.42, 65.43.1(c), 65.43.1(g), 65.43.1(i) and 65.56. Amended § 65.22 applies to an offer of work made on or after the amendment's effective date. Amended § 65.102 applies to weeks of unemployment ending on or after December 16, 2005. Section 65.56 applies to a request made on or after the section's effective date to withdraw an application for benefits.

H. *Public Comment*

Interested parties are invited to submit written comments, objections or suggestions about the proposed regulations to Craig Pontz, Assistant Director, OUCB, 6th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, Pennsylvania 17121 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Comments may also be submitted electronically to "cpontz@state.pa.us". A subject heading referencing the proposed regulation, name and return mailing address must be included in each transmission. In addition, all electronic comments shall be contained in the text of the transmission, not in an attachment.

For further information on this proposed rulemaking, you may contact Craig Pontz at (717) 783-0605.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745(a)), the Department submitted a copy of these proposed regulations on 5-10-10 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Labor Relations Committee and the Senate Labor and Industry Committee. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, Regulatory Review and Promulgation. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days after the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed regulations to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly, and the Governor of objections raised, prior to final publication of the regulations.



SANDI VITO, Secretary

Fiscal Note

Annex A
TITLE 34. LABOR AND INDUSTRY
PART II, SUBPART A. UNEMPLOYMENT COMPENSATION
CHAPTER 65. EMPLOYEE PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS
SUBCHAPTER B. PREREQUISITES FOR ELIGIBILITY
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INCOMPETENT CLAIMANTS
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§ 65.1. [Definitions] Reserved.

[In addition to the terms defined in § 61.1 (relating to definitions), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Agent state—A state in which an individual files a claim for benefits from another state.

Benefits—Compensation payable to an individual with respect to the individual employment, under the unemployment insurance law of a state.

Interstate Benefit Payment Plan—The plan approved by the Interstate Conference of Employment Security Agencies, under which benefits are payable to unemployed individuals absent from the state in which benefit credits have been accumulated.

Interstate claimant—An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term does not include an individual who customarily commutes from a residence in an agent state to work in a liable state unless the Bureau finds that this exclusion would create undue hardship on the claimants in specified areas.

Liable state—A state against which an individual files, through another state, a claim for benefits.

Registered for work—When a claimant has appeared at a regularly established public employment office and has completed and signed an Application for Benefits, Form UC-42; and when, upon request, he has furnished that office with the accepted title for the occupations at which he is usually employed.

Registration for work—When an individual has appeared in person at a public employment office and has furnished that office with his name, usual occupation and correct post office address and has declared his availability for suitable work.

State—The term includes Puerto Rico, the Virgin Islands and the District of Columbia.

Week of unemployment—Any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.]

§ 65.11. [Effective period] Work registration; effective period.

[A registration for work created by the actions stated in § 65.1 (relating to definitions) shall continue in effect as follows:

(1) For a period of 3 weeks following the date of the valid application for benefits.

(2) As long as the claimant continues to file claims for weeks of unemployment ending at intervals of not more than 3 weeks, the first of which claims was for a week ending within the 3 week period following the date of the valid application for benefits.]

(a) A claimant who files an application for benefits in accordance with § 65.41 (relating to filing methods) and declares his or her availability for suitable work has registered for work for purposes of section 401(b) of the Law (43 P.S. § 801(b)). The work registration is effective on the date that the application is effective in accordance with § 65.42 (relating to application for benefits – effective date) or § 65.43.1 (relating to extended filing) and remains in effect for the benefit year corresponding to the application and any subsequent period for which benefits are payable pursuant to the application.

(b) When a claimant files an application for benefits in accordance with § 65.41 (relating to filing methods), the Department will provide information relevant to the claimant's reemployment and receipt of employment services to the employment office.

§ 65.12. [Registration renewals] Reserved.

[(a) If, during the claim-filing period, commencing with the date of the valid application for benefits, the interval between claims exceeds 3 weeks, the claimant shall renew his registration for work by appearing at a regularly established public employment office and completing and signing a Notice of Registration Renewal and Request for Separation Information, Form UC-45A.

(b) The registration for work resulting from a registration renewal shall continue in effect in the same manner and under the same conditions as a registration for work resulting from an application for benefits.]

§ 65.13. [Predated claims] Reserved.

[(a) Registration renewals may be predated for the same reasons and the same periods of time permitted for an application for benefits, as provided by §§ 65.41—65.43 (relating to procedure; date of filing; and places of filing).

(b) If an application for benefits, a registration renewal or a claim for a week of unemployment filed by a claimant is predated for any reason given in this subsection, the requirement that the claimant is registered for work will be waived for the number of weeks specified for the applicable reason, or for the total of the specified number of weeks for the applicable reasons where there is a combination of more than one reason and in each instance the term week means the calendar week, Sunday through Saturday, immediately preceding the week, which includes the day on which the application for benefits, registration renewal or claim was actually filed:

(1) The inaccessibility of the local public employment office, or the infrequency of the periodic itinerant service established for the area in which the claimant is filing his application or claim, shall permit a waiver of not more than 2 weeks.

(2) The closing of an office due to a Sunday or holiday shall permit a waiver of not more than 2 weeks.

(3) The inability of the office to take the claimant's application or claim on the day he reported for that purpose or the postponement of application or claims taken by the office for administrative reasons shall permit a waiver of not more than 6 weeks.

(4) The refusal of the office to accept the application or claim as a result of an error or mistake shall permit a waiver of not more than 52 weeks.

(5) Pending determination of the eligibility of similarly situated employees under section 402(d) of the law (43 P.S. § 802(d)) if the application or claim is filed within 6 weeks after the determination has become final.

(6) The claimant's failure to file an application for benefits or registration renewal due to erroneous advice by his employer that he would be recalled to work within 1 week shall permit a waiver for not more than 2 weeks.

(7) The claimant's failure to file a claim for a week of unemployment due to sickness of the claimant, a sickness or death of another member of the claimant's family, or an act of God shall permit a waiver for not more than 2 weeks.

(8) The claimant's failure to file a claim for a week of unemployment if the claimant became employed shall permit a waiver for not more than 4 weeks.

(9) If the claimant files for a week of partial unemployment a waiver for that week shall be permitted regardless of when the claim is actually filed.

(c) The period of time during which the registration for work is waived may not exceed the period of time by which the application for benefits, registration renewal or claim, was predated, nor may the effective date of the registration for work be a day previous to the date of the application for benefits, registration renewal or the first day of a week of unemployment with respect to which a claim is filed.]

§ 65.14. Additional information.

[Nothing in this subchapter shall be construed to prevent the Department from requiring of a claimant additional information with respect to his work history and occupational aptitudes in a manner and on forms which it may require] A claimant shall provide all information required by the Department to facilitate reemployment, including the claimant's work history, education and receipt of employment services.

§ 65.15. [Claims filed in other states] Reserved.

[A claimant, filing claims in another state under the section 312 of the law (43 P. S. § 792), will be considered to have registered for work when he has complied with the registration for work requirements of the state in which he is filing his claim. Registration for work shall continue in effect for the length of time provided by the laws, regulations and procedures of the state in which he is filing his claim.]

§ 65.21. [Disqualification for benefits] Reserved.

[In accordance with the provisions of section 402(a) of the law (43 P. S. § 802), an employe shall be ineligible for benefits for any week in which he is unemployed because he has refused without good cause an offer for suitable work made either by the local public employment office or by an employer who notifies the employment office within 7 working days of his offer to the potential employe.]

§ 65.22. Applicable rules.

(a) With respect to offers of suitable work made by an employer, the following rules apply:

(1) A work offer may be considered as suitable irrespective of whether the work is in employment as defined in sections 4 and 402(a) of the law (43 P. S. § § 753 and 802(a)).

(2) The employer shall give notice of the offer [notification shall be made] to the [local public employment office] UC Office at which the employe has filed or may file an application for benefits [or a registration renewal].

(3) The offer to the employe may be in writing, in which case a carbon copy or an exact duplicate shall be furnished to the [employment office] UC Office within 7 working days after the mailing of the offer. If the employer's offer is not made in writing, as, for example, where it is made by telephone, the employer shall provide the [employment office] UC Office with a detailed written description of the offer within 7 working days after the making thereof. Regardless of the manner in which the offer is communicated to the employe, the employer [it] shall include in the offer all of the following:

- (i) The rate of pay and unit of work or period of time which the rate represents.
- (ii) The scheduled working hours during each day of the week.
- (iii) The location of the work.
- (iv) A description of the duties or a generally recognized term covering the duties.
- (v) Any unusual requirement or condition of work.

(b) [Where] When the employer who makes the offer has employed the employe after the beginning of the employe's base year and, in [his] the offer of employment to the employe, states that the conditions of the job are substantially the same as those under which the employe last worked for the employer, the requirements enumerated in subsection (a) are not required to be included.

(c) If the job offered the employe is covered under a labor-management agreement and a statement to this effect is made in the offer of employment, no further description is [will be] required.

(d) [It will be the responsibility of the Department, before] Before issuing a decision on a claim for benefits, the Department will [to] determine on the basis of facts whether the work offer was suitable within the meaning of section 4(t) of the [1]Law (43 P. S. § 753(t)).

[CLAIMS FOR COMPENSATION]

§ 65.31. [Filing] Reserved.

[Claims for compensation shall be filed personally by the claimant on official forms available for that purpose at local public employment offices, Monday through Friday, unless closed due to a holiday or by official pronouncement.]

§ 65.32. [Week of unemployment] Reserved.

[(a) The week of unemployment with respect to which a claim is filed shall be the calendar week preceding the week which includes the day on which the claim is actually or constructively filed; except that those individuals who are filing claims for compensation for a period of unemployment which began prior to the effective date of this section shall continue to file claims for weeks of any 7 consecutive days for as long as that period of unemployment continues and they are otherwise eligible.

(b) Notwithstanding the provisions contained in this section, the local offices shall insure that claimants be scheduled to report for the purpose of processing the first compensable week of their application on the first local office work day possible within the applicable time limits of this section regardless of the last digit of their Social Security number. Thereafter, claimants may be rescheduled in accordance with the digit reporting schedule.]

§ 65.33. [Predating] Reserved.

[(a) A claim for a week of total, partial or part-total unemployment may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed when, in the opinion of the Bureau, the claimant was prevented, through no fault of his own, from filing his claims during the week immediately subsequent to the week for which the claim is filed because of one or more of the following reasons:

(1) The inability of the local public employment office to handle currently all claims, or the postponement of claims-taking by the local office for administrative reasons shall permit not more than 6 weeks of predating.

(2) The inaccessibility of the office in isolated areas, or the infrequency of the periodic itinerant service established for the area in which the claimant resides shall permit not more than 2 weeks of predating.

(3) The closing of an office due to a holiday or by official pronouncement shall permit not more than 2 weeks of predating.

(4) The refusal of an office to accept a claim as a result of an error or mistake shall permit not more than 52 weeks of predating.

(5) Sickness or death of another member of the claimant's immediate family or an act of God shall permit not more than 2 weeks of predating, provided the claimant was available for work during the week for which the claim is being filed.

(6) Illness or injury which incapacitates the claimant shall permit predating for the duration of the incapacitation plus 2 weeks but in no instance for more than 52 weeks,

provided the claimant meets the eligibility requirements during the week for which the claim is being filed.

(7) If the claimant is employed not more than 4 weeks of predating shall be permitted. Where a claimant is filing claims for partial or part-total benefits not more than 4 weeks predating shall be permitted, commencing with the date on which the employer paid wages for the claim week in question.

(8) An appeal of a claimant from disqualification may permit not more than 4 weeks of predating while the appeal is pending.

(b) When a combination of more than one of the reasons outlined in subsection (a) has prevented the claimant from filing a claim and adherence to the most liberal limitation applicable to his case would be inequitable to the claimant, the predating provisions for applicable reasons shall be added and predating to the number of weeks which is equal to the sum of all applicable limitations shall be permitted.

(c) A claim for a week of total or part-total unemployment may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed, when a determination of the eligibility of similarly situated employees under section 402(d) of the law (43 P. S. § 802(d)) is pending, provided that the claim is filed within 6 weeks after the determination has become final.]

§ 65.35. [Ineligibility] Reserved.

[An employe shall be ineligible for compensation for any week with respect to which or a part of which he has received or is seeking compensation under the provisions of an unemployment compensation law of any other state or of the United States. If it is finally determined that he is not entitled to compensation for the week this disqualification does not apply.]

APPLICATION FOR BENEFITS AND CLAIMS FOR COMPENSATION

§ 65.41 [Procedure] Filing methods.

(a) Applications for benefits shall be filed on Form UC-42 in local public employment offices, Monday through Friday, unless closed due to a holiday or by official pronouncement.

(b) Claimants reporting to file new applications for benefits shall be served and their claims processed on the day they report, or are scheduled to report, regardless of the last digit of their Social Security numbers, unless it is factually determined that rescheduling,

within applicable time limits of this section, is deemed necessary by the local office manager for administrative reasons.

(c) An application for benefits may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed when, in the opinion of the Bureau, the claimant was prevented or persuaded, through no fault of his own, from filing the application because of one of the following reasons; and in each instance the term week or weeks means the calendar week or weeks, Sunday through Saturday.

(1) The inaccessibility of the local public employment office in isolated areas, or the infrequency of the periodic itinerant service established for the area in which the claimant is filing an application shall permit not more than 2 weeks of predating.

(2) The closing of an office due to a holiday or by official pronouncement may permit not more than 2 weeks of predating.

(3) The inability of an office to take the claimant's application on the day on which he reported for the purpose, or the postponement of application taken by the office for administrative reasons may permit not more than 6 weeks of predating.

(4) Erroneous advice by his employer that he would be recalled to work within 1 week may permit not more than 2 weeks of predating.

(5) The refusal of the office to accept the application as a result of an error or mistake shall permit not more than 52 weeks of predating.

(d) Notwithstanding the criteria set forth in this section establishing maximum time limitations to and reasons for backdating an application for benefits, and for the purpose of insuring prompt adjudication of each application, the local employment office shall schedule or reschedule claimants, regardless of the last digit of their Social Security numbers, to report on the first local office work day possible within the applicable time limits of this section following the day on which their failure or inability to report was due to a reason specified in this section.

(e) An application for benefits may be deemed to be filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed, when a determination of the eligibility of similarly situated employes under section 402(d) of the law (43 P. S. § 802(d)) is pending, provided that the application is filed within 6 weeks after the determination has become final.]

(a) An application for benefits shall be filed by one of the following methods:

(1) Telephoning a UC Office and providing all information required by the Department representative.

(2) Completing the Department's internet application and electronically transmitting it to the Department.

(3) Completing the Department's application form and sending the form to a UC Office by U. S. Mail or transmitting the form to a UC Office by facsimile machine.

(b) A claim for compensation shall be filed by one of the following methods:

(1) Telephoning a UC Office and providing all information required by the Department representative.

(2) Telephoning the Department's telephone claim system and providing all information required by the system.

(3) Completing the Department's internet claim and electronically transmitting it to the Department.

(c) The filing date of an application for benefits or a claim for compensation is:

(1) For applications and claims filed by telephone, the date when the telephone call occurs if the claimant provides all information required by the Department representative or the Department's telephone claim system.

(2) For applications and claims filed by the internet, the date indicated on the confirmation page displayed upon completion of the filing process.

(3) For applications and claims filed by U. S. Mail –

(i) The date of the official U. S. Postal Service postmark on the envelope, a U. S. Postal Service Form 3817 (Certificate of Mailing) or a U. S. Postal Service certified mail receipt.

(ii) If there is no official U. S. Postal Service postmark, U. S. Postal Service Form 3817 or U. S. Postal Service certified mail receipt, the date of a postage meter mark on the envelope.

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the date recorded by the UC Office when it receives the application or claim.

(4) For applications filed by facsimile machine –

(i) The date of receipt imprinted by the UC Office fax machine.

(ii) If the UC Office fax machine does not imprint a legible date, the date of transmission imprinted by the sender's fax machine.

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the date recorded by the UC Office when it receives the application.

(d) Notwithstanding subsections (a) through (c), the Department may prescribe additional methods for claimants to file applications for benefits and claims for compensation and additional places where applications and claims may be filed. If the Department prescribes an additional method to file an application or claim, it will designate the date on which an application or claim is filed by that method.

(e) The Department may suspend use of one or more of the methods of filing applications for benefits and claims for compensation prescribed by subsections (a), (b) and (d) when it determines, in its discretion, that the method is obsolete, impractical, inefficient, or infrequently used.

§ 65.42. [Date of filing] Application for benefits - effective date.

[(a) Notwithstanding the provisions of § 65.41(b) (relating to procedure) an application for benefits shall be deemed to be filed as of the first day of any week for which a claim is filed for compensation for partial unemployment within the time limits prescribed under § 65.33 (relating to predated), if the claimant has not previously established a benefit year applicable to that week.

(b) A claim for a week of total or part-total unemployment may not be filed with respect to an application for benefits which is prior to the first day of the week which includes the day on which the application for benefits is actually filed, except within the time limits prescribed in § 65.41(b) and (c).]

An application for benefits is effective on the first day of the calendar week in which the application is filed or deemed filed in accordance with § 65.43.1 (relating to extended filing), whichever is earlier.

§ 65.43. [Places of filing] Claims for compensation – when to file.

[Notwithstanding the provisions of this chapter that applications for benefits, claims and work registrations shall be filed at local public employment offices, the Bureau may

accept applications for benefits, claims and work registration at any other places which may be advisable and expedient.]

(a) Claims for compensation shall be filed bi-weekly in accordance with this subsection.

(1) The Department will establish a schedule of consecutive 2-week periods for each claimant, and may revise a claimant's schedule as necessary.

(2) At the end of each 2-week period for a claimant, the claimant may file claims for compensations for both of the weeks or a claim for compensation for one of the weeks. The claims or claim shall be filed no later than the last day of the week immediately following the 2-week period.

(b) Notwithstanding the provisions of subsection (a), the Department may allow a claimant to file a claim for compensation for the first week of a 2-week period before the 2-week period has ended. The claim shall be filed no later than the last day of the 2-week period.

§65.43.1. Extended filing

(a) For a week in which a claimant was employed less than his or her full time work, the claimant shall file a claim for compensation not later than the last day of the second week after the employer paid wages for that week. If the earliest week for which a claim for compensation is filed in accordance with this subsection precedes the week in which the claimant's application for benefits is filed or deemed filed, as determined without regard to this subsection, the Department will deem the application to be filed during the earliest week for which a claim is filed.

(b) If a determination regarding the eligibility of claimants under section 402(d) of the Law (43 P.S. §802(d)) is issued, similarly situated claimants shall file claims for compensation for weeks during the work stoppage not later than the last day of the sixth week after the determination becomes final. If the earliest week for which a claim for compensation is filed in accordance with this subsection precedes the week in which the claimant's application for benefits is filed or deemed filed, as determined without regard to this subsection, the Department will deem the application to be filed during the earliest week for which a claim is filed.

(c) The Department will deem an application for benefits to be filed prior to the week in which it actually is filed if the claimant did not file the application earlier for a reason listed in subsection (e). The Department will deem the application to be filed during the week that precedes the week of actual filing by the number of weeks indicated in subsection (e).

(d) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 (relating to claims for compensation – when to file), for a reason listed in subsection (e), the time for filing the claim is extended for the number of weeks indicated in subsection (e).

(e)

<u>Reason</u>	<u>Number of weeks</u>
<u>The Department suspends accepting filings or is unable to handle all filings.</u>	<u>6</u>
<u>The claimant attempts to file by telephone, internet or fax transmission in accordance with § 65.41 (relating to filing methods), the method used to attempt to file is unavailable or malfunctions, and the attempt to file occurs on the last day that the claimant could timely file by the method used</u>	<u>2</u>
<u>A UC Office fails to accept a filing as a result of error or mistake by the Department.</u>	<u>52</u>
<u>Sickness or death of a member of the claimant's immediate family or an act of God.</u>	<u>2</u>
<u>Other, if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant.</u>	<u>2</u>

(f) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 (relating to claims for compensation – when to file) due to

the claimant's illness or injury, the time for filing the claim is extended until the last day of the second week after the incapacity ends.

(g) The Department will deem an application for benefits to be filed no more than 2 weeks prior to the week in which it actually is filed if the claimant did not file the application earlier because an employer erroneously advised the claimant that the claimant would be recalled to work within 1 week.

(h) If two or more of the reasons enumerated in subsections (e) and (f) have prevented a claimant from filing a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 (relating to claims for compensation - when to file), the longest extension applies. If adherence to the longest extension would be inequitable to the claimant, the sum of the applicable extensions applies.

(i) Notwithstanding any provision of this section, the Department may not extend the time for filing a claim for compensation more than 52 weeks and may not deem an application for benefits to be filed in a week included in a previous benefit year.

§ 65.44. [Information as to eligibility] Reserved.

[A base-year employer or last employer, who, under the provisions of section 501(c) of the law (43 P. S. § 821(c)), desires to raise a question as to the eligibility of a claimant, may do so only in writing delivered to the local public employment office indicated on the form by which he has been notified that the claimant has filed an application for benefits.]

§ 65.56. Withdrawing an application for benefits

(a) A claimant may request to withdraw an application for benefits and cancel the corresponding benefit year only if the following requirements are met:

(1) If benefits are paid to the claimant pursuant to the application or benefits otherwise payable to the claimant pursuant to the application are used to recoup an overpayment of benefits, the claimant's request to withdraw the application and cancel the corresponding benefit year is made no later than one of the following:

(i) 15 days after the Department issues the first payment of benefits or first uses benefits otherwise payable to recoup an overpayment.

(ii) 45 days after the Department issues the first payment of benefits or first uses benefits otherwise payable to recoup an overpayment, if the claimant is withdrawing the application and canceling the corresponding benefit year

in order to file an application under the unemployment compensation law of another state or the federal government.

(2) All benefits paid to the claimant pursuant to the application, if any, are repaid.

(3) If benefits otherwise payable to the claimant pursuant to the application are used to recoup an overpayment of benefits, the amount owed on the overpayment is restored to the amount owed prior to recoupment.

(4) The claimant has not been disqualified for benefits under sections 3, 402(a), 402(b), 402(e), 402(e.1) or 402(h) of the Law (43 P.S. §§ 752, 802(a), 802(b), 802(e), 802(e.1) or 802(h)) or, if the claimant has been disqualified under any of those sections, the disqualification is terminated under section 401(f) of the Law (43 P.S. § 801(f)) or § 65.62 of this chapter (relating to duration of disqualification).

(b) A request to withdraw an application for benefits and cancel the corresponding benefit year is not effective until the Department approves it. The Department will deny a request to withdraw an application for benefits and cancel the corresponding benefit year if the requirements of this section are not met or good cause exists to disapprove the request.

(c) For purposes of this section, benefits paid to a claimant include amounts deducted from the claimant's benefits and paid on the claimant's behalf, including without limitation deductions for income tax withholding and support.

§ 65.63. Filing of appeals.

Appeals filed under the provisions of section 501(e) of the [I]Law (43 P. S. § 821(e)) and further appeals filed under the provisions of section 502 of the [I]Law (43 P. S. § 822) shall be filed [through the local public employment office at which the claimant has filed his application or claim with respect to which the appeal is taken. Appeals and further appeals shall be in writing and shall state the reasons for the appeal.] in accordance with chapter 101.

§ 65.73. Full-time work.

(a) A claimant's full-time work for purposes of section 4(u) of the Law (43 P.S. §753(u)) shall be determined in accordance with the following:

(1) Except as provided in paragraphs (4) and (5), a claimant's full-time work is determined by reference to the claimant's base year, as follows:

(i) The total number of hours the claimant worked in the base year for all employers is divided by the number of weeks in the base year in which the claimant worked to determine the claimant's full-time work.

(ii) If information for only a portion of the base year is available, the formula in subparagraph (i) is applied to the portion of the base year for which information is available to determine the claimant's full-time work.

(iii) If the claimant's full-time work cannot be determined in accordance with subparagraphs (i) or (ii), the Department may determine the claimant's full-time work by another method that calculates the average number of hours per week that the claimant worked during weeks in the claimant's base year in which the claimant worked.

(2) For purposes of paragraph (1), the number of hours that a claimant worked during a week in the base year for an employer in excess of the customary number of hours the claimant worked per week for that employer in the base year is excluded from the determination of the claimant's full-time work.

(3) For purposes of paragraph (1), if a claimant's normal work schedule in the base year consisted of multiple week cycles, and the cycle normally included one or more weeks during which the claimant did not work, all weeks in the cycle are deemed weeks in which the claimant worked.

(4) If a claimant voluntarily leaves employment to accept new employment that provides fewer hours of work, the number of hours the claimant customarily works at the new job constitutes the claimant's full-time work.

(5) If a claimant limits the number of hours per week the claimant will work, that number of hours constitutes the claimant's full-time work.

(b) For purposes of section 4(u) of the Law, if a claimant's normal work schedule during the benefit year consists of multiple week cycles, and the claimant normally works a different number of hours, which may include zero, during the weeks in the cycle, for each week in the cycle the claimant is deemed to be working the number of hours determined by dividing the total number of hours worked during the cycle by the number of weeks in the cycle.

§ 65.102. Application of the deduction.

(a) Unless otherwise excluded from deductibility under this chapter, any pension payment received by a claimant with respect to a week for which the claimant receives unemployment compensation (UC) benefits shall be deducted from the weekly benefit amount otherwise payable to the claimant for that week.

(b) Deductible pensions include a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment which is made under a plan maintained or contributed to by the claimant's base period or chargeable employer and is based on the claimant's previous work.

(c) Similar periodic payments shall include all deductible pension payments made on other than a weekly basis which shall be prorated into a weekly amount before being deducted from the weekly benefit amount payable to the claimant.

(d) The Department will [deduct all Social Security retirement pensions which are based upon the claimant's previous work or self-employment, or both, including primary Social Security, old age and retirement disability benefits.] not deduct pensions paid under the Social Security Act (Public Law 74-271, 42 U.S.C. §301 et seq.), or the Railroad Retirement Act of 1974 (Public Law 93-445, 88 Stat. 1305), if the claimant contributed to the pension in any amount, and [(1) The Department] will not deduct Social Security payments [which] that are not based on the claimant's previous work, such as Supplemental Security Income.

[(2) The Department will deduct pensions paid under the Social Security Act (42 U.S.C.A. § § 301—1397e) and the Railroad Retirement Act (45 U.S.C.A. § § 231—231s) when the claimant's base year employer contributed to the pension plan. The pensions are deductible irrespective of whether the claimant's base year employment affected the eligibility for, or increased the amount of, the pension.]

(e) If the pension is entirely contributed to by the employer, 100% of the prorated weekly amount of the pension will be deducted from the weekly benefit amount payable to the claimant.

(f) If the pension is contributed to by the individual, in any amount, 50% of the prorated weekly amount of the pension will be deducted from the weekly benefit amount payable to the claimant.

(g) The weekly benefit amount payable to the claimant will not be reduced below zero by the prorated weekly amount of the pension.

(h) For any week with respect to which the claimant is not receiving but is eligible for a pension, the Department will not deduct the prorated weekly amount of the pension from the weekly benefit amount payable to the claimant.

(i) If, as a result of the claimant's ineligibility to receive a pension payment under a pension plan, the claimant receives a payment which represents only a return of the claimant's own contributions to the plan and does not include any contribution from a

base period or chargeable employer, the payment is not a pension and will not be deducted from the weekly benefit amount payable to the claimant.

(j) The Department will not deduct pension payments if the services performed by the individual during the base period or the remuneration received for those services from a base period or chargeable employer did not affect the individual's eligibility for, or increase the amount of, the pension [, except for pensions paid under the Social Security Act and the Railroad Retirement Act].

(k) The Department will not deduct periodic payments which are made under severance agreements, profit sharing arrangements or disability plans administered by a union, employer, workers' compensation carrier, insurance company or the Veterans Administration, unless the payments are based on retirement and fulfill all other prerequisites specified in this chapter.

(l) The Department will not deduct lump sum pension payments which represent the transfer of "eligible rollover distributions" from a "qualified trust" to an "eligible retirement plan," as those terms are defined in section 402(c) of the Internal Revenue Code (IRC) (26 U.S.C.A. § 402(c)).

(1) If all of the requirements of section 402(c) of the IRC are met, including the transfer of the payments into an "eligible retirement plan" within 60 days of receipt by the individual, those payments do not represent a payment to the individual for the purposes of retirement and are not received by the individual under section 404(d) of the law (43 P. S. § 804(d)) and section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C.A. § 3304(a)(15)) (FUTA).

(2) If a distribution, or any part thereof, does not meet the requirements of section 402(c) of the IRC, the Department will deduct the prorated weekly amount of that portion of the lump sum payment which is received by the claimant in accordance with § 65.108 (relating to rules of attribution).

(3) If a claimant does not roll over the entire lump sum into an eligible retirement plan, as set forth in paragraph (1), the Department will determine the amount to be deducted from the claimant's weekly benefit amount by dividing the amount of the lump sum payment that is received by the claimant by the total amount the claimant could have received had the claimant opted to take the entire lump sum available to the claimant. That quotient represents the deductible share of the lump sum pension amount received by the claimant. The claimant's unreduced monthly pension is the amount the claimant could have received each month had the claimant opted to take periodic payments in lieu of a lump sum. The Department will calculate the deductible portion of that unreduced monthly amount by multiplying it by the quotient representing the deductible share of the lump sum which is received by the claimant. Using the deductible amount of that

monthly pension, the Department will compute the prorated weekly deductible amount in accordance with § 65.108.

(4) If a claimant presents documented proof to the Department that the claimant has rolled over a portion of a deductible lump sum payment into an eligible retirement plan within 60 days, so that all or some of that lump sum payment is not subject to Federal Income Tax, the Department will credit the claimant for any amount deducted from the claimant's UC benefits which is properly exempt from deduction because it is attributable to the transfer of the funds into an eligible retirement plan.

§ 65.117. [Appeals] Reserved.

[(a) For the purpose of appeals filed by employers the date of decision with respect to determination of the weekly benefit rate of a claimant shall be the date on which the Notice of Financial Determination (Form UC-44F) indicating the weekly benefit rate was mailed to the employer.

(b) For the purpose of appeals filed by claimants the date of the decision shall be the date on which the Notice of Financial Determination (Form UC-44F) indicating the weekly benefit rate was personally delivered to him.

(c) In order to avoid multiplicity of appeals, whenever, pending an appeal, an issue arises as to the weekly benefit rate the issue shall be determined by the Department and submitted to the appropriate appellate tribunal for inclusion in the pending appellate proceedings and decision thereon.]

§65.139. Definitions

In addition to the words and terms defined in §61.1 (Definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Agent state—A state in which an individual files a claim for benefits from another state.

Benefits—Compensation payable to an individual with respect to the individual's unemployment, under the unemployment insurance law of a state.

Interstate Benefit Payment Plan—The plan approved by the National Association of State Workforce Agencies, under which benefits are payable to unemployed individuals absent from the state in which benefit credits have been accumulated.

Interstate claimant—An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term does not include an individual who customarily commutes from a residence in an

agent state to work in a liable state unless the Department finds that this exclusion would create undue hardship on the claimants in specified areas.

Liabile state—A state against which an individual files, through another state, a claim for benefits.

State—The term includes Puerto Rico, the Virgin Islands and the District of Columbia.

Week of unemployment—Any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

§ 65.156. Reserve accounts of employers.

[(a) Allowances for dependents are not chargeable to the reserve accounts of employers.
(b)] If a reserve account for an employer subject to this act is not authorized or not required to be maintained under criteria established in the law, allowances for dependents shall be subject to a reimbursement as follows:

(1) The Unemployment Compensation Fund shall be reimbursed for dependent's allowance paid as a result of State employment under section 1001 of the law (43 P. S. § 891). Reimbursement will be made in accordance with section 1003 of the law (43 P. S. § 893).

(2) The Unemployment Compensation Fund [will] shall be reimbursed for dependent's allowance paid as a result of service in the employ of a reimbursable nonprofit organization as defined under section 1101 of the law (43 P. S. § 901). Charges will be made to the employer's account in accordance with section 1108 of the law (43 P. S. § 908). Reimbursement will be made in accordance with section 1106 of the law (43 P. S. § 906).

(3) The Unemployment Compensation Fund shall be reimbursed for dependent's allowance paid as a result of service in the employ of a reimbursable instrumentality or political subdivision of this Commonwealth as defined under section 1201 of the Law (43 P.S. § 911). Charges will be made to the employer's account in accordance with section 1203 of the Law (43 P.S. § 913). Reimbursement shall be made in accordance with section 1202.4 of the Law (43 P.S. § 912.4).

[(3) 4] The Unemployment Compensation Fund [will] shall be reimbursed based upon the percent of charge for dependent's allowance paid on a combined wage claim. The transferring state's reimbursement shall be in accordance with arrangements entered into under section 312 of the law (43 P. S. § 792).

COMMONWEALTH OF PENNSYLVANIA

May 7, 2010

The Honorable Arthur Coccodrilli
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

**Re: Proposed Rulemaking
Department of Labor and Industry
34 Pa. Code, Part II, Subpart A, Unemployment Compensation
Chapter 65, Employe Provisions
No. 12-74**

Dear Chairman Coccodrilli:

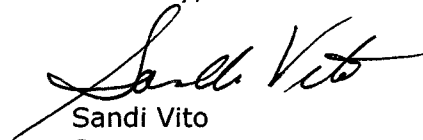
Enclosed is a proposed rulemaking package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry.

This rulemaking will amend Chapter 65, Employe Provisions, of the Unemployment Compensation regulations.

Comments, suggestions or questions should be directed to Sean F. Creegan, Deputy Chief Counsel, 10th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; Telephone: 717-787-4186; Fax: 717-787-1303; E-mail: screegan@state.pa.us.

The Department's staff will provide your staff with any assistance required to facilitate your review of this proposal.

Sincerely,



Sandi Vito
Secretary

cc w/ encl: Jane C. Pomerantz, Chief Counsel
Neil E. Cashman, Jr., Senior Advisor for External Affairs
Patrick T. Beaty, Deputy Secretary for Unemployment
Compensation Programs
Andrea Mead, Director, Office of Policy, Planning and Development
Daniel F. Ruzansky, Director of Legislative Affairs
Sean F. Creegan, Deputy Chief Counsel

OFFICE OF THE SECRETARY | Department of Labor & Industry | 651 Boas Street |
Room 1700 | Harrisburg, PA 17121 | 717.787.3756 | www.dli.state.pa.us

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

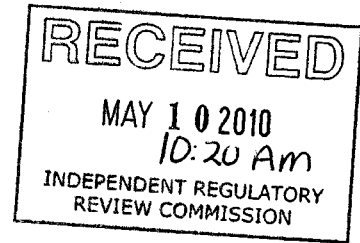
I.D. NUMBER: 12-74

SUBJECT: 34 Pa. Code, Part II, Subpart A., Unemployment Compensation
Chapter 65. Employee Provisions

AGENCY: DEPARTMENT OF LABOR AND INDUSTRY

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions b. Without Revisions



FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON LABOR RELATIONS
5/10/10	<u>Danielle Cahy</u>	MAJORITY CHAIRMAN <u>Robert E. Belfanti, Jr.</u>
5/10/10	<u>Sam Khoo</u>	MINORITY CHAIRMAN <u>Gene DiGirolamo</u>
		SENATE COMMITTEE ON
5/10	<u>Emilie Restegus</u>	MAJORITY CHAIRMAN <u>John R. Gordner</u>
5/10	<u>B. R.</u>	MINORITY CHAIRMAN <u>Christine M. Tartaglione</u>
5/10/10	<u>K. Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
5/10	<u>n. Lattin</u>	LEGISLATIVE REFERENCE BUREAU