

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

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## SECTION I: PROFILE

(1) Agency: Department of Labor and Industry (Department)  
Office of Unemployment Compensation Tax Services (UCTS)

(2) Agency Number: 12

Identification Number: 93

IRRC Number: 2869

(3) Short Title: 34 PA Code, Part II, Subpart A, Unemployment Compensation Chapter 63,  
Responsibilities of Employers

(4) PA Code Cite: 34 PA Code § 63.1 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: Michael L. Ziemke, UCTS, 717-772-1581

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

Michael L. Ziemke, UCTS, Room 900, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; (717) 772-1581; fax: (717) 787-7821; mziemke@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

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

The purpose of this rulemaking, which covers 50 sections of the Department's regulations, is to update the regulations to conform to current law and practice.

This rulemaking repeals 12 sections of Chapter 63 and partially repeals additional sections under circumstances such as the following: where the provision is obsolete or contains obsolete references, is inconsistent with the UC Law or is superseded by a subsequent statute; in order to consolidate regulations with similar subject matter; or where the provision merely repeats statutory language.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: transfers of experience from predecessor to successor, rate and assessment appeals, methods for filing documents, relief from benefit charges, filing reports and paying taxes electronically, and employment records.

(9) Include a schedule for review of the regulation including:

Within 30 days following publication of the proposed rulemaking.

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:

N/A

C. The expected date of promulgation of the proposed regulation as a final-form regulation:

Unknown at this time.

D. The expected effective date of the final-form regulation:

\*

E. The date by which compliance with the final-form regulation will be required:

\*

F. The date by which required permits, licenses or other approvals must be obtained:

\*

\* With the exception of §§ 63.52(e) and 63.110 through 63.114, the proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. §§ 63.11 through 63.17, as amended or rescinded by this rulemaking, shall apply to transfers of organization, trade, business or workforce under § 301(d)(1)(A) of the Law (43 P.S. § 781(d)(1)(A)) that occur on or after the effective date of those amendments. Section 63.59 shall apply to reports filed on or after the effective date of that section. The amendments to § 63.64(a) shall apply to employment occurring on or after the effective date of those amendments. The amendments to § 63.94 apply to elections to make payments in lieu of contributions that take effect on or after the effective date of those amendments. Because § 63.2 has been superseded by Act 5 of 2005 (Act of June 15, 2005, P.L. 8, No. 5) with regard to transfers of organization, trade, business or workforce that occur on or after July 1, 2005, § 63.2 is being amended to restrict its applicability to transfers that occurred before that date.

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Section 63.52(e) and §§ 63.110 through 63.114 will take effect on January 1, 2011, and apply to calendar quarters and billing periods that begin on or after the effective date. The Department, however, may delay the effective date of these provisions if it is impossible or impractical to implement them on January 1, 2011.

(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 regulations are proposed under § 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.

Some of the provisions of this rulemaking are needed to implement Act 5 of 2005 (Act of June 15, 2005, P.L. 8, No. 5) or to make the Department's regulations consistent with the Law. Other provisions are necessary for consistency with the Federal Unemployment Tax Act, 26 U.S.C. § 3301 *et seq.*

(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 that 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 63 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.

If a successor employer applies for the predecessor employer's experience record and reserve account balance, the Department may use the experience of the predecessor in the calculation of successor's

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contribution rate for the remainder of the year in which the business transfer from the predecessor to successor occurs, thereby giving the successor a reduced rate immediately after the transfer. Under existing regulations, the successor may not obtain a reduced rate until the following year.

A successor-in-interest that shared common ownership, control or management with its predecessor only for a very short period of time before the business transfer will not have to assume the predecessor's experience record and reserve account balance. This will benefit the successor if the predecessor's employment experience would increase the successor's UC tax rate.

The amended regulations will require that all employers file the quarterly UC-2 and UC-2A reports through an electronic filing system designated by the Department. This will benefit the Department, because the Department will save the cost of printing and mailing report forms to employers and the cost of processing completed reports submitted by employers, which is approximately \$2.1 million per year. Employers also will benefit from this requirement, because ultimately it will allow the Department to complete the UC-2 report and calculate the amount of contribution due for the employer.

Under this rulemaking, if an employer lays off fifty or more individuals within a seven-day period, the employer is required to provide information to assist the Department to process the workers' benefit claims. This provision will benefit workers involved in mass layoffs, because it will expedite their claims for UC.

A nonprofit employer that elects reimbursable status must provide a surety bond or collateral equal to one per cent (1%) of the employer's taxable wages for the four quarters prior to the election. This rulemaking will limit an election of reimbursable status to four years, but allow the employer to file a successive election immediately. If an employer's payroll increases over the four year period between elections, the employer is required to increase the amount of its bond or collateral. This is appropriate, because an employer's potential for UC benefit charges increases as its payroll increases. The UC Fund will benefit when an employer increases the amount of its bond or collateral, because the amount of potential benefit charges covered by some type of security will be greater.

The Law and regulations provide that a nonprofit, reimbursable employer may satisfy the security requirement by submitting monetary collateral. The Department implements this provision by allowing employers to submit certified checks or assign interest bearing bank deposits, such as CDs and savings accounts, to the Department. The Department holds the check or instrument evidencing the deposit and returns it to the employer after the period of reimbursable status ends or the employer provides substitute security, as long as the employer has no outstanding reimbursement obligations. Holding checks and bank instruments for an extended period has become problematic, in light of frequent bank mergers, escheat of bank deposits, and the possibility that the employer may access the funds. In order to address these problems, this rulemaking provides that an employer that uses a check, a bank deposit or securities as collateral shall provide new collateral each time the employer renews its election of reimbursable status, which will occur at two to four year intervals. The UC Fund will benefit from this amendment, because it will help to prevent the Fund from holding collateral with diminished value.

Pursuant to the rulemaking, if an employer's contribution liability for a calendar quarter or reimbursement liability for a billing period equals or exceeds \$5,000.00, the employer must pay that and subsequent liabilities by electronic transfer. This requirement will save the Department an estimated

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\$77,000.00 during the first calendar year it is in effect, and increasing amounts in subsequent years as more employers become subject to this requirement.

All members of the regulated community, approximately 280,000 Pennsylvania employers, will benefit because the amended regulations will provide a more up-to-date, accurate and complete source of guidance on compliance requirements.

(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?

This rulemaking will require some reimbursable employers to increase the amount of their surety bond or collateral to reflect an increase in payroll. This is a prudent measure, because an increased payroll creates an increased potential for UC reimbursement obligations.

Employers that cease to provide employment but subsequently resume giving employment will be required to file a new UC registration with the Department.

The types of employment and payroll records that employers must maintain for a specified period of time is expanded. In most circumstances, however, this amendment will not require employers to create additional records, as it applies to records that any business would normally have or only applies if the employer already has such a record.

(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 employers covered by the Law, approximately 280,000, are required to comply.

**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 UC tax savings for successor employers that are able to obtain a reduced contribution rate immediately after the business transfer from the predecessor cannot be accurately estimated, as the amount saved would vary from case to case. Moreover, transfers of employment experience from a predecessor to a successor that occurred in the past cannot be used as a basis for an estimate, because the records of these cases do not contain the information needed to make such a projection.

The UC tax savings for successors-in-interest that are not required to assume the predecessor's experience record and reserve account balance because the predecessor and successor shared common ownership, control or management only for a very short period of time cannot be estimated. The number of successors that will be covered by this provision and the number that would benefit from it are unknown, and the amount of the tax savings will vary from case to case.

Based on the increase in the amount of wages paid by nonprofit, reimbursable employers from 2002 through 2005, the requirement that these employers increase the amount of their security if payroll increases will raise the value of the security they provide by approximately \$13 million per year. It is not possible, however, to estimate the cost of this increased security to the employers involved, because the cost may be different for each employer. An employer may meet the security requirement by providing a surety bond. The cost of a bond may vary from employer to employer and from insurance company to insurance company. Or, an employer can provide cash collateral, in which case there is no cost other than the unavailability of the cash while it is on deposit with the Commonwealth.

(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.

In situations when successor employers receive a reduced contribution rate for the remainder of the year in which the business transfer from the predecessor occurred, there will be a reduction in tax payments into the UC Fund. If a successor-in-interest is not required to assume the predecessor's experience record and reserve account balance because the predecessor and successor shared common ownership,

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control or management only for a very short period of time, and if the predecessor's employment experience would have increased the successor's contribution rate, there will be a reduction in UC tax payments. As indicated in item 17, these amounts cannot be accurately estimated.

The amended regulations will require that all employers file the quarterly UC-2 and UC-2A reports through an electronic filing system designated by the Department. The Department will save the cost of printing and mailing report forms to employers and the cost of processing completed reports submitted by employers, which is approximately \$2.1 million per year.

The provisions requiring certain reimbursable employers to increase the amount of their bond or collateral as their payroll increases should result in a financial benefit to the UC Fund, because they will increase the amount the Fund will be able to recover should such an employer default on its reimbursement obligations. The amount of additional recovery for the Fund will vary from employer to employer.

Pursuant to the rulemaking, if an employer's contribution liability for a calendar quarter or reimbursement liability for a billing period equals or exceeds \$5,000.00, the employer must pay that and subsequent liabilities by electronic transfer. This requirement will save the Department an estimated \$77,000.00 during the first calendar year it is in effect, and increasing amounts in subsequent years as more employers become subject to this requirement.

(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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	Unable to estimate					
<b>Local Government</b>						
<b>State Government</b>	\$2,177,000 per year, plus other savings that cannot be estimated.					
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>	Unable to estimate.					
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	Unable to estimate.					

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<b>Local Government</b>					
<b>State Government</b>					
<b>Total Revenue Losses</b>					

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

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
	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
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.

The new requirement that some reimbursable employers increase the amount of their surety bond or collateral to reflect an increase in payroll affects only a small percentage of the regulated community and, as explained in Item 13, is necessary for the well being of the UC Fund.

Although the provisions requiring a new UC registration when an employer resumes providing employment and expanding the types of records an employer must maintain impose new requirements, these requirements are minimal and do not involve any significant cost.

By comparison to the limited adverse effects discussed above, the provisions allowing a successor to receive a reduced tax rate immediately after the business transfer from the predecessor will confer benefits on successor employers. The Commonwealth will save approximately \$2.1 million per year in administrative costs as a result of the provision requiring quarterly tax reports to be filed electronically, and approximately \$ 77,000.00 per year as a result of the requirement that certain employers pay by electronic transfer.

(22) Describe the communications with and input from the public and any advisory council/group in the

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development and drafting of the regulation. List the specific persons and/or groups who were involved.

Stakeholder letters were sent to the following interested parties:

- ADP, UC Management, PO Box 58040, 3300 Clott Street, Santa Clara, CA 95052-8040
- James E. Frick, Inc., PO Box 283, 145 Weldon Parkway, St. Louis, MO 63166
- Paychex, Suite 1800, 100 Kings Highway South, Rochester, NY 14625-0397
- Gates, McDonald & Co., PO Box 1944, Three Nationwide Plaza, Columbus, OH 43216
- Talx UC eXpress, PO Box 283, St. Louis, MO 63166-0283
- Interstate Tax Service Bureau, PO Box 247, 3233 Market Street, Camp Hill, PA 17011
- Heiss, Gibbons & Co., Inc., 7 East Main Street, Mechanicsburg, PA 17055
- Pennsylvania Business Roundtable, 208 N. Third Street, Suite 400, Harrisburg, PA 17101
- National Federation of Independent Businesses, 301 Chestnut Street, Suite 101, Harrisburg, PA 17101
- Pennsylvania Chamber of Business and Industry, 417 Walnut St., Harrisburg, PA 17101-1918
- Community Legal Services, Inc., 1424 Chestnut Street, Philadelphia, PA 19102-2505
- AFL-CIO of Pennsylvania, 231 State Street, Harrisburg, PA 17101-1110
- R.E. Harrington, Inc., PO Box 11874, Federal Square Station, Harrisburg, PA 17108
- National Employers Council, UC Tax Council, PO Box 4816, Syracuse, NY 13221

Input was received from:

- Community Legal Services
- AFL-CIO

(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?

Much of this rulemaking consists of technical and procedural amendments that would not affect the competitiveness of the Commonwealth adversely. Moreover, the substantive provisions regarding successor employers' tax rates will make the Pennsylvania UC system more "user friendly" for employers.

(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

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Labor and Industry, as follows:

The following regulations are being abolished:

- § 63.11 [General Requirements] Reserved
- § 63.12 [Successors not formerly employers] Reserved
- § 63.13 [Successors formerly employers] Reserved
- § 63.14 [Rate determination in subsequent years] Reserved
- § 63.16 [Periods of subjectivity] Reserved
- § 63.34 [Requests as to voluntary separations or discharge of employe for willful misconduct.] Reserved
- § 63.35 [Requests as to part-time workers] Reserved
- § 63.43 [Date of filing] Reserved
- § 63.58 [Penalties for failure to file] Reserved
- § 63.61 [Voluntary contributions to Unemployment Compensation Fund] Reserved
- § 63.62 [Assignment of contribution credit] Reserved
- § 63.75 [Approval of reciprocal coverage elections] Reserved

The following regulations are being added:

- §63.1.1 Determining common ownership, control or management
- § 63.25 Filing methods
- § 63.26 Appeal to the Secretary
- § 63.36.1 Termination of relief from charges and notice of changed circumstances
- § 63.59 PEO quarterly reports
- § 63.60 Mass layoff report
- § 63.66 Power of attorney
- § 63.96.1 Conversion to contributory status
- § 63.110 Definitions
- § 63.111 Electronic transfer requirement, waiver and penalty
- § 63.112 Voluntary participation
- § 63.113 Date of payment
- § 63.114 Miscellaneous provisions

The following regulations are being amended:

- § 63.2. Part transfers of organization, trade or business
- § 63.3. Required forms and time limits for applications
- § 63.4 Disapproval of applications for delinquency
- § 63.15 Determination under combined experience provisions
- § 63.17 Binding effect of transfers
- § 63.21 Notification of rate and p[P]rerequisites for applications for review and redetermination
- § 63.22 Supporting data
- § 63.23 Unacceptable reasons
- § 63.24 Unacceptable applications
- § 63.31 [General requirement] Applicability and definitions
- § 63.32 Reasons for [separation] relief from benefit charges

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- § 63.33 [Information accompanying requests] Request for relief from benefit charges
- § 63.36 Time limits for [filing for] requesting relief from benefit charges.
- § 63.41 Requests
- § 63.42 Time period for filing and revocability
- § 63.51 [Form UC-1] Initial and renewed registration
- § 63.52 [Form UC-2] Quarterly reports from employers
- § 63.63 Agreement to compromise
- § 63.64 Records to be kept by employer
- § 63.91 [Purpose] Elections and collateral
- § 63.93 Filing of surety bond
- § 63.94 Filing of security deposit
- § 63.95 Money[s] or securities received
- § 63.97 Return or sale of money[s] or securities
- § 63.99 Assignment of rate of contribution

(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.

Employers that cease to provide employment but subsequently resume providing employment will be required to file a new UC registration with the Department under certain circumstances.

Currently, employers file the quarterly UC-2 report on a report form or through "E-tides," which is an electronic reporting system shared with the Department of Revenue. Employers with 250 or more employees are required to file the quarterly UC-2A report by magnetic media, diskette or through E-tides. Other employers may use those methods or may file a report form. This rulemaking will require that all employers file the quarterly reports through an electronic filing system.

If an employer lays off fifty or more individuals within a seven day period the employer will be required to provide information to assist the Department to process the workers' benefit claims.

(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.



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

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

By: *Angela M. Elliott*  
DEPUTY ATTORNEY GENERAL

AUG 13 2010

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. 12-93

Date of Adoption: \_\_\_\_\_

By: *Sandi Vito*  
SANDI VITO

Title: 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 G. Clark*  
JUN 10 2010

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 63. RESPONSIBILITIES OF EMPLOYERS

SUBCHAPTER A. GENERAL FUNCTIONS

SUBCHAPTER B. MULTISTATE AGREEMENTS

SUBCHAPTER C. NONPROFIT ORGANIZATIONS MAKING PAYMENTS IN LIEU OF CONTRIBUTIONS

SUBCHAPTER D. PAYMENT BY ELECTRONIC TRANSFER

## PROPOSED RULEMAKING

### DEPARTMENT OF LABOR AND INDUSTRY OFFICE OF UNEMPLOYMENT COMPENSATION TAX SERVICES

#### 34 PA. CODE CH. 63

The Department of Labor and Industry (Department), Office of Unemployment Compensation Tax Services (UCTS), 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 63, Responsibilities of Employers.

#### *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 50 sections of the Department's regulations, is to update the regulations to conform to current law and practice.

This rulemaking repeals 12 sections of Chapter 63 and partially repeals additional sections. 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 contents 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 removed or replaced with references to the current agency or the Department generally. References to specific forms, some of which are outdated, are removed whenever possible.

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

§ 63.1.1 – The Law requires the Department to transfer the experience record and reserve account balance of a predecessor to its successor-in-interest if they share common

ownership, control or management. The Department had interpreted this provision of the Law to apply if there was common ownership at the time of the business transfer and without regard to the duration of that common ownership. See *Armco Inc. v. Department of Labor and Industry*, 713 A. 2d 1208 (Pa. Cmwlth. 1998). This new regulation modifies the Department's interpretation of the statute. It provides that the Department will not transfer a predecessor's employment experience to its successor-in-interest if the entities' common ownership, control or management commenced immediately before the business transfer.

§ 63.2 – The regulation, dealing with part transfers of an employer's experience record and reserve account balance, will apply only to transfers that occurred before July 1, 2005. Subsequent transfers will be governed by the regulations that deal with transfers generally, and the 2005 amendments to the Law.

§ 63.3 – The regulation is amended to clarify that an application for transfer of an employer's experience record and reserve account balance is necessary in all cases where a transfer is desired, and specifies when the Department will consider an untimely application for transfer to be filed *nunc pro tunc*.

§ 63.4 – The regulation is amended to omit a subsection allowing a redundant 30-day period to pay the predecessor's delinquency in order to obtain a transfer of the predecessor's experience record and reserve account balance to the successor.

§ 63.15 – The regulation is extensively revised to consolidate the provisions that determine the earliest calendar year for which a combination of the predecessor's experience and successor's experience will apply to the contribution rate of the successor. Under certain circumstances, the combined experience applies to the successor's rate for the year in which the transfer of business or workforce to the successor occurred. These provisions apply to a transfer of the predecessor's experience record and reserve account balance that is requested by the successor.

§ 63.21 – The regulation is amended to provide that an employer is not notified of its contribution rate until the Department issues a contribution rate notice to the employer. As amended, the regulation will also provide that an employer may not assert a reason for objecting to the Department's rate determination that it has not included in its appeal.

§ 63.22 – The supporting data to be furnished with a rate appeal is expanded to address types of delinquency rates that exist as a result of recent amendments to the Law.

§ 63.23 – Unacceptable reasons for filing a rate appeal are expanded to include a challenge to the reserve account balance based on an alleged error that is over 4 years old. New provisions addressing the consequences of a payment plan default are added. A

rate that is revised upwards due to a default may be appealed, but the only issue that may be raised is whether there was a default justifying the increase.

§ 63.25 – This new regulation enumerates acceptable methods for filing documents with UCTS. Also, it specifies the dates on which documents submitted to the Department by these methods will be deemed to be filed.

§ 63.26 – This new section provides procedures for appeals of UCTS decisions to the Secretary. It concerns rate appeals, petitions for reassessment, and applications for refund or credit.

§§ 63.31 – 63.36.1 -- The regulations concerning relief from charges are revised, including addition of a new section. New definitions and a list of circumstances under which an employer will be granted relief are provided. The method to be used, and time limit, for filing requests for relief are amended. The new section addresses termination of relief from benefit charges.

§ 63.51 – This regulation is amended to include the circumstances under which an employer must file a renewed registration document with the Department.

§ 63.52 – As amended, this section requires that all employers file quarterly reports electronically.

§ 63.59 – This new section specifies the method of filing, and the filing date of, Professional Employer Organization reports. It will replace a statement of policy issued on this subject.

§ 63.60 – Pursuant to this new section, if an employer lays off 50 or more individuals within a seven-day period the employer is required to provide information to assist the Department to process the workers' benefit claims.

§ 63.63 – This section on agreements to compromise tax liability is amended to specify when an application to compromise is effective.

§ 63.64 – This section on records that an employer must retain for unemployment compensation purposes is amended to include workers whom the business believes are not "employees" and workers covered by a professional employer arrangement. In addition, more types of records are required.

§ 63.66 – This new section provides that a business may empower an agent to represent it before the Department.

§ 63.91 – As amended, this section specifies the minimum and maximum periods of an election of reimbursable status.

§ 63.93 – This amended section specifies the term of a surety bond, and clarifies that the bond applies to all benefits that are based on wages paid during the period of reimbursable status, including benefits paid after that status has ended.

§ 63.94 – Pursuant to this amended section, a nonprofit organization that provides money or securities as collateral in connection with an election of reimbursable status shall provide new collateral if it renews its reimbursable status when the current election expires. This amended section also specifies the reimbursement obligations that are secured by collateral in the form of money or securities.

§ 63.96.1 – This new regulation establishes procedures for situations when an employer elects reimbursable status but fails to provide collateral, or a surety bond ceases to be effective during the period of an election. It also provides that unpaid reimbursement obligations are a basis for a delinquency contribution rate, if the employer converts to contributory status. Also, this regulation clarifies that a reimbursable employer that becomes a contributory employer remains liable for benefits that are based on wages paid during reimbursable status.

§ 63.97 – If a reimbursable employer provides securities as collateral, the Department may sell the securities to satisfy any amount owed by the employer. As amended, this regulation clarifies that any interest or increase in value accruing on the security may also be applied to the employer's debt.

§ 63.99 – As amended, this regulation contains updated provisions specifying how the Department will determine an employer's contribution rate if the employer previously had been a reimbursable employer.

§§ 63.110 - 63.114 – These new regulations specify the circumstances in which an employer must pay liabilities by electronic transfer. An employer that is not required to pay by electronic transfer and a claimant who is repaying an overpayment of benefits may use electronic transfer voluntarily.

### *C. Affected Persons*

The proposed rulemaking potentially affects all of the approximately 280,000 employers covered by the Law.

*D. Fiscal Impact*

*Commonwealth and the Regulated Community* – This rulemaking will allow the Department under certain circumstances to use the UC employer experience of both the predecessor and the successor-in-interest to calculate the successor’s contribution rate for the year in which the transfer of business or workforce occurred. Although the amount of UC tax savings for successor employers and the corresponding decrease in tax revenues for the UC Fund cannot be estimated, the Department expects the number of affected employers to be small and the overall monetary impact to be minimal. The Department is unable to estimate the cost to nonprofit, reimbursable employers of the provision requiring them to increase the value of their security as payrolls increase.

*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*

If an employer ceases to provide employment and subsequently resumes providing employment, amended § 63.51 will require the employer under certain circumstances to renew its UC registration. While § 63.64, as amended, requires employers to keep employment records on all workers and to preserve additional types of records, it does not require employers to create records or information that they would not have created otherwise and does not impose additional reporting requirements.

*F. Sunset Date*

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

### G. *Effective Date*

With the exception of §§ 63.52(e) and 63.110 through 63.114, the proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The amendments to §§ 63.11 through 63.17, as amended or rescinded by this rulemaking, apply to transfers of organization, trade, business or workforce under section 301(d)(1)(A) of the Law (43 P.S. § 781(d)(1)(A)) that occur on or after the effective date of those amendments. Section 63.59 applies to reports filed on or after the effective date of that section. The amendments to § 63.64(a) apply to employment occurring on or after the effective date of those amendments. The amendments to § 63.94 apply to elections to make payments in lieu of contributions that take effect on or after the effective date of those amendments. Because § 63.2 has been superseded by Act 5 of 2005 with regard to transfers of organization, trade, business or workforce that occur on or after July 1, 2005, § 63.2 is amended to restrict its applicability to transfers that occurred before that date.

Section 63.52(e) and §§ 63.110 through 63.114 will take effect on January 1, 2011, and apply to calendar quarters and billing periods that begin on or after the effective date. The Department, however, may delay the effective date of these provisions if it is impossible or impractical to implement them on January 1, 2011.

### H. *Public Comment*

Interested parties are invited to submit written comments, objections or suggestions about the proposed regulations to Michael L. Ziemke, UCTS, Room 900, 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 also may be submitted electronically to "mziemke@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 Michael L. Ziemke at (717) 772-1581.

### I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of these proposed regulations on 8-26-2010 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.

  
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SANDI VITO, Secretary

Fiscal Note

**Annex A**  
**TITLE 34. LABOR AND INDUSTRY**  
**PART II, SUBPART A. UNEMPLOYMENT COMPENSATION**  
**CHAPTER 63. RESPONSIBILITIES OF EMPLOYERS**  
**SUBCHAPTER A. GENERAL FUNCTIONS**  
**SUBCHAPTER B. MULTISTATE AGREEMENTS**  
**SUBCHAPTER C. NONPROFIT ORGANIZATIONS MAKING PAYMENTS IN**  
**LIEU OF CONTRIBUTIONS**  
**SUBCHAPTER D. PAYMENT BY ELECTRONIC TRANSFER**

**§ 63.1.1. Determining common ownership, control or management**

For purposes of determining whether an employer was owned, controlled or managed by its successor-in-interest, whether an employer owned, controlled or managed its successor-in-interest, or whether an employer and its successor-in-interest were owned, controlled or managed by the same interest or interests under section 301(d)(1)(B) of the Law (43 P.S. § 781(d)(1)(B)), common ownership, control, management or a combination thereof that exists at the time of the transfer of organization, trade, business or workforce will be disregarded if it commences immediately before the transfer and during a series of nearly contemporaneous business transactions culminating in the transfer.

**§ 63.2. Part transfers of organization, trade or business.**

(a) *Applicability.* This section applies to part transfers of organization, trade or business that occurred before July 1, 2005.

([a] b) *Wage ratios.* When an application for part transfer of an employer's experience record and reserve account balance has been approved, or where such a transfer has occurred as provided in section 301(d)(1)(B) of the Law (43 P. S. § 781(d)(1)(B)), the [Bureau shall] Department will determine the ratio that the wages paid during the last [3] three completed calendar years prior to the date of the transfer, in that part of the organization, bears to all wages paid by the predecessor in the corresponding period. If the part which is transferred has been in existence for a period of less than three calendar years, wages paid during that period shall be used to determine the ratio.

([b] c) *Application of ratio.* The wage ratio shall be used as the basis to reduce the reserve account of the predecessor and to establish the reserve account of the successor-in-interest, as follows:

(1) Apply the ratio to the reserve account of the predecessor beginning with the fiscal year in which wages were first paid in that part of the organization, trade or business for which records were transferred, and ending with the date on which the transfer occurred.

(2) Transfer the amounts determined pursuant to paragraph (1) from the experience record and reserve account balance of the predecessor to that of the successor-in-interest.

([c] d) *Benefit paid subsequent to transfer.* When an application for part transfer of the experience record and reserve account balance of an employer is filed and approved, benefits paid after the date of transfer based on wages paid before the date of transfer, in that part of the organization, trade or business transferred, shall be charged to the experience record and reserve account of the successor-in-interest.

[(d) *Part transfers.* An application for part transfer of the experience record and reserve account balance of an employer may be approved by the Bureau only if the application is filed in accordance with § 63.3 (relating to required forms and time limits for applications). If the predecessor is a partnership, a majority of the partners shall sign the application, except that when the partnership consists of two individuals, both shall sign the application.]

### **§ 63.3. Required forms and time limits for applications.**

(a) An a[A]pplication for the transfer of the experience record and reserve account balance of a predecessor under the provisions of section 301(d)(1)(A) of the Law (43 P.S. § 781(d)(1)(A)) shall be filed [on the “Application for Experience Record and Reserve Account Balance of Predecessor” provided on page 3 of the Form UC-1, Employer’s Initial Statement, and accompanied by an Affidavit of Business Transfer Form (UC-745), or a copy of the bill of sale signed by both parties involved in the transfer, or in such form as to contain the essential information required] in the manner prescribed by the Department and containing all information that the Department requires. The application shall be signed by both the predecessor and the successor-in-interest.

(b) An application for the transfer of the experience record and reserve account balance of a predecessor, either in whole or in part, shall be filed [prior to the end of the calendar year immediately following the calendar year in which the transfer occurred] within the time allowed by section 301(d)(1)(A) of the Law.

(c) An application for the transfer of the experience record and reserve account balance of a predecessor that is filed beyond the time allowed by section 301(d)(1)(A) of the Law is deemed to have been filed timely w[W]hen the sole business of the successor-in-interest is that which [he] the successor-in-interest acquires from the predecessor in a total transfer of the predecessor’s business, and the successor-in-interest, through error or inadvertence, continues to file contribution reports and pay contributions under the account number of the predecessor and at the rate determined by the [Bureau] Department to apply to the predecessor [, the reporting and payment shall be considered an application for the experience record and reserve account balance of the predecessor with respect to the time limit for filing the application] .

**§ 63.4. Disapproval of applications for delinquency.**

[(a)] If an application for transfer of the experience record and reserve account balance of a predecessor either in whole or part, is filed and the predecessor is delinquent in the payment of contributions, interest or penalties due on wages paid by [him] the predecessor as of the date the business was transferred, the [Bureau shall] Department will disapprove the application if the delinquency is not paid within 30 days of the request for payment by the [Bureau] Department. [The disapproval shall apply to all actions pertaining to the transfer, including the transfer of the predecessor's contribution rate to the successor.]

[(b)] The transfer application may be considered if the following actions are taken within the time allowed in the Law for filing transfer applications:

(1) The successor-in-interest files a timely rate appeal requesting a reconsideration of the transfer application.

(2) The delinquency is paid not later than 30 days following the request for payment by the Bureau (following such appeal).

[(c)] If a transfer application is approved the transfer shall be effective with the calendar year for which the timely appeal is filed.]

**§ 63.11. [General requirements.] Reserved.**

[Where an application for the transfer of the experience record and reserve account balance of a predecessor has been approved, or where the transfer has occurred as provided in section 301(d)(1)(B) of the Law (43 P.S. § 781(d)(1)(B)), the contribution rates for the successor-in-interest shall be determined in accordance with the provisions of §§ 63.12- 63.17.]

**§ 63.12. [Successors not formerly employers.] Reserved.**

[The successor-in-interest who prior to the transfer was not an employer during the calendar year in which the transfer occurred (referred to in §§63.13-63.17 as the "transfer year") shall be assigned the rate of his predecessor for the remainder of that year, if the following requirements were met:

(1) The transfer application was filed by the successor-in-interest prior to the expiration of the rate appeal period for the transfer year (which rate appeal period expires 90 days after the mailing of the rate notice to the successor's last known post office address) or a timely rate appeal was filed and the transfer

application was filed within 30 days of notification by the Bureau of the need for such transfer application.

(2) The predecessor paid contributions for the period required under section 301.1(b) of the Law (43 P.S. § 781.1(b)), with respect to the organization, trade or business, or part thereof transferred.]

**§ 63.13. [Successors formerly employers.] Reserved.**

[Successors-in-interest who prior to the transfer were employers during the transfer year may not be assigned the rate of their predecessors for the remainder of the transfer year.]

**§ 63.14. [Rate determination in subsequent years.] Reserved.**

[For calendar years subsequent to the transfer year, the rate for the successor-in-interest shall be determined on the basis of the experience record and reserve account balance, or in case of a part transfer the appropriate portion thereof, which has been transferred from the predecessor and combined with that of a successor-in-interest, except that the rate for a successor-in-interest who has acquired a predecessor's reserve account balance which has been adjusted to zero shall be determined in accordance with §63.16 Title (relating to periods of subjectivity).]

**§ 63.15. Determination under combined experience provisions.**

[Subject to § 63.16 (relating to periods of subjectivity), the first calendar year for which combination of experience shall be applicable for computing the contribution rate for the successor-in-interest shall be determined as follows:

(1) If the transfer application is filed prior to the expiration of the rate appeal period for the calendar year immediately following the transfer year, it shall be effective beginning with the calendar year in which it is filed.

(2) If the successor-in-interest has filed a timely application for review and redetermination of contribution rate, and filed a transfer application within 30 days of notification by the Bureau of the need for such application, it shall be effective beginning with the calendar year for which the timely appeal was filed.

(3) If the transfer application is filed after the expiration of the rate appeal period for the calendar year immediately following the transfer year, it shall be effective beginning with the calendar year following the year in which it is filed.]

If a successor-in-interest applies for a transfer of the experience record and reserve account balance of a predecessor, in whole or in part, under the provisions of section 301(d)(1)(A) of the Law (43 P.S. § 781(d)(1)(A)), the Department will combine the experience of the predecessor and the experience of the successor-in-interest, if any, for the purpose of determining the contribution rate of the successor-in-interest. The earliest calendar year for which a combination of experience pursuant to section 301(d)(1)(A) of the Law will apply to the contribution rate of the successor-in-interest will be determined in accordance with this section.

(a) If the successor-in-interest files its application for a transfer of experience prior to the expiration of the rate appeal period for a calendar year, the year in which the application is filed is the earliest calendar year for which a combination of experience will apply.

(b) If the successor-in-interest files a timely application for review and redetermination of its contribution rate, and files its application for a transfer of experience within 30 days after the Department notifies the successor-in-interest that an application for a transfer of experience is required, the year for which the application for review and redetermination of contribution is filed is the earliest calendar year for which a combination of experience will apply.

(c) If the successor-in-interest files its application for a transfer of experience after the expiration of the rate appeal period for a calendar year, the calendar year following the year in which the application is filed is the earliest calendar year for which a combination of experience will apply.

(d) Notwithstanding subsections (a), (b) and (c), the earliest calendar year for which a combination of experience will apply is the year in which the transfer of organization, trade, business or work force occurred, if the successor-in-interest files its application for a transfer of experience within ninety (90) days after the transfer of organization, trade, business or work force and any of the following apply:

(1) The successor-in-interest did not pay wages covered by the Law prior to the transfer of organization, trade, business or work force.

(2) The successor-in-interest most recently paid wages covered by the Law prior to the year in which the transfer of organization, trade, business or work force occurred, and the reserve account of the successor-in-interest is terminated in accordance with section 302(d) of the Law (43 P.S. § 782(d)) as of the computation date for that year.

(3) The successor-in-interest most recently paid wages covered by the Law prior to the year in which the transfer of organization, trade, business or work force occurred, and the reserve account of the successor-in-interest is not terminated in

accordance with section 302(d) of the Law as of the computation date for that year.

(e) If the earliest calendar year for which a combination of experience applies to the contribution rate of the successor-in-interest is the year in which the transfer of organization, trade, business or work force occurred, and paragraph (i) or (ii) of subsection (d) applies to the successor-in-interest, the rate of the successor-in-interest for the year in which the transfer of organization, trade, business or work force occurred is the rate of the predecessor for that year.

(f) Notwithstanding subsections (a) through (e), the experience record and reserve account balance acquired from the predecessor may not affect the contribution rate of the successor-in-interest for any period prior to the date on which the transfer of organization, trade, business or workforce occurs.

**§ 63.16. [Periods of subjectivity.] Reserved.**

[(a) Subsequent to the transfer year, a successor-in-interest who has acquired the whole or part of the reserve account balance of a predecessor which was adjusted to zero under the provisions of section 302(c) of the law (43 P.S. § 782(c)) shall not have his rate determined on the basis of the combined experience of the predecessor and the successor-in-interest until the expiration of three calendar years following the computation date on the which the predecessor's account was adjusted to zero, unless prior to the expiration of the three-year period the successor-in-interest as of any computation date meets either of the following reporting requirements:

(1) Has been subject under the Law for 14 or more consecutive calendar quarters.

(2) Has been subject under the Law for a period as long as, or longer than, the preceding employer.

(b) A successor-in-interest whose period of subjectivity under the Law is not sufficient to meet the requirements of subsection (a) of this section shall pay contributions at the rate provided in section 301(d)(1)(D)(3) of the Law (43 P.S. § 781(d)(1)(D)(3)).]

**§ 63.17. Binding effect of transfers.**

A transfer of an experience record and reserve account balance, in whole or in part, having been approved by the [Bureau] Department on the basis of an application for the transfer of predecessor experience record and reserve account balance, [shall be binding on] binds both the predecessor and the successor-in-interest. [The experience

record and reserve account balance thus transferred shall be included with of the successor-in-interest for determination of rates for calendar years subsequent to the year of transfer except as provided in §63.16 (relating to periods of subjectivity). The predecessor shall not be entitled to adjusted rates for calendar years subsequent to the transfer year, based upon the experience record and reserve account balance which has been transferred.]

**§ 63.21. Notification of rate and p[P]rerequisites for applications for review and redetermination.**

(a) For purposes of sections 301(e)(2) and (j) of the Law (43 P.S. § 781(e)(2) and (j)), an employer is not notified of its rate of contribution for a calendar year until the Department issues a Contribution Rate Notice to the employer.

(b) The Department may consider [A]an application for review and redetermination of contribution rate filed under section 301(e)(2) of the Law [(43 P. S. § 781(e)(2)) shall be considered] only if it meets the following conditions:

(1) It is filed within [90 days after the mailing of the contribution rate notice to the last known post office address of the employer.] the time specified in section 301(e)(2) of the Law.

(2) The reasons set forth by the employer contain factual statements, not mere generalities, showing specifically where the contribution rate of[f]r reserve account balance is incorrect. The Department may not consider any factual or legal reason that the employer fails to assert in its application for review and redetermination.

**§ 63.22. Supporting data.**

Employers who wish to file an application for review and redetermination of contribution rate shall furnish [the following type of] supporting data as follows:

(1) To contest a ruling [by the Bureau] of insufficient experience, the employer shall submit information to show that his employer experience record meets the eligibility requirements of section 301.1(b) of the Law (43 P. S. § 781.1(b)) for a rate of less than the standard rate provided in section 301(a)(1) (43 P. S. § 781(a)(1)) or section 301(a)(3) (43 P. S. § 781(a)(3)), whichever is applicable.

(2) To contest a [ruling by the Bureau of money or report delinquency] contribution rate assigned under section 301(a)(2) of the Law (43 P.S. § 781(a)(2)), the employer shall submit information to show [whether] that it filed all reports establishing the amount of contributions and showing the amount of wages paid for calendar quarters

through the second quarter of the preceding calendar year, and that it paid all contributions, penalties and interest due on wages paid to the end of the second quarter of the preceding calendar year. [have been paid. If a delinquency does exist, he may remove this cause of his ineligibility for a reduced rate by filing the reports and paying the delinquent amount within 30 days after the Bureau, in response to his request, notifies the employer of the missing reports and amounts due.]

(3) To contest a contribution rate assigned under section 301(a)(2.1) of the Law (43 P.S. § 781(a)(2.1)), the employer shall submit information to show that it filed all reports required by section 315(a)(1), (2) and (3) of the Law (43 P.S. § 715(a)(1), (2) and (3)).

([3]4) To contest the accuracy of any figures shown on the [Form UC-657,] Contribution Rate Notice, the employer shall submit information obtained from his records to substantiate the alleged discrepancy.

### **§ 63.23. Unacceptable reasons.**

(a) The Department will not approve [A]an application for review and redetermination of contribution rate based on the following reasons [shall not be approved by the Bureau]:

(1) *Questions of eligibility.* [(i)] - That claimants who caused the benefit charges were ineligible to receive unemployment compensation.

[(i)i] Questions of eligibility for compensation shall be resolved conclusively under sections 501—512 of the Law (43 P. S. § § 821—832) and § 65.63 (relating to filing of appeals) [, and the affected employers shall be notified with respect thereto].

[(i)ii] Appeals raising questions of eligibility for compensation shall be filed in the manner and within the time prescribed [therein] in the Law and this subpart. (For detailed instructions, see [the reverse side of] Form UC-44F, Notice of Financial Determination, which is mailed to base-year employers at the time the [Bureau] Department makes the financial determination on the application for benefits by the claimant.)

(2) *Claimants who caused benefit charges.* [(i)] - That claimants who caused benefit charges were separated from the applicant due to being discharged for willful misconduct connected with their work or due to leaving work without good cause attributable to their employment.

[(i)i] Questions as to the right to relief from charges for these reasons shall be resolved conclusively under section 302(a) of the Law (43 P. S. § 782(a)) and

§§ 63.31—63.37 (relating to relief from benefit charges)[, and the affected employers shall be notified with respect thereto].

([i]ii) Requests raising these questions shall be filed in the manner and within the time prescribed [therein] in the Law and this subpart. (For detailed instructions, see Form UC-44FR, Request for Relief from Charges, which is mailed to base-year employers with the Form UC-44F.)

(3) *Benefits charged to employer's reserve account.* [(i)] - That benefits charged to the reserve account of the employer as shown on Form UC-640, Monthly Notice of Compensation Charged, are incorrect.

([i]i) Questions [as to] regarding the accuracy of benefit charges on Form UC-640, shall be resolved conclusively under section 301(e)(1) of the Law (43 P. S. § 781(e)(1))[, and the affected employers shall so be notified].

([i]ii) Protests contesting the accuracy of such charges shall be filed in the manner and within the time prescribed in [Form UC-640] the Law and this subpart. (For detailed instructions, see [the reverse side of] Form UC-640, Monthly Notice of Compensation Charged, which is mailed to base-year employers following the payment of unemployment compensation to their former employes.)

(4) Reserve account balance - That the reserve account balance as indicated on the Contribution Rate Notice is inaccurate, if the alleged inaccuracy is attributable to an error that occurred more than 4 years prior to the computation date for the contribution rate in question.

(5) Payment plan default - That the rate of contribution assigned after the employer defaults on a deferred payment plan is incorrect for reasons unrelated to the payment plan or the default.

(i) Pursuant to section 301(a)(2) of the Law (43 P.S. § 781(a)(2)), an employer that is delinquent in the payment of contributions, interest or penalty is assigned a rate of contribution that is the sum of 3% plus the employer's rate as otherwise determined. However, if the employer is complying with a deferred payment plan, section 301(a)(2) provides that the Department will issue a rate of contribution that does not include the additional 3%. If the employer defaults on the payment plan, section 301(a)(2) provides that the employer's contribution rate or rates for the period of the payment plan are retroactively revised to include the additional 3%.

(ii) If an employer with a deferred payment plan is assigned a rate that does not include the additional 3% and the employer is dissatisfied with the assigned rate, the employer is responsible to timely contest the assigned rate. If an employer

defaults on a payment plan and the employer's rate is revised to include the additional 3%, an application for review and redetermination of contribution rate filed in response to the rate revision is limited to the issue of whether a default on the payment plan occurred.

(b) [While a] An application for review and redetermination of contribution rate shall not be disapproved under this section [on the grounds described herein] while the issues of benefit eligibility or charge relief are [still] pending. In all such cases, the employer's application shall be held in abeyance until final resolution of the issue of eligibility or relief from charges [as the case may be].

#### **§ 63.24. Unacceptable applications.**

(a) The Department will deny the following [A]applications for review and redetermination of contribution rate [shall be denied for the following reasons]:

(1) Applications which are not timely filed according to § 63.21(1) (relating to notification of rate and prerequisites for applications for review and redetermination).

(2) Applications based upon the reasons in § 63.23 (relating to unacceptable reasons) [shall be denied and returned to the employers with letters explaining the reasons for the denial].

(b) The Department may deny [A]applications for review and redetermination of contribution rate which do not furnish the information required in § 63.21(b)(2) or § 63.22 (relating to supporting data) [shall be returned to the employer with a statement of the reasons for returning such applications].

(c) If an application is denied under this section, the Department will inform the employer and advise the employer of the reasons for the denial.

[(c) Any of the forms referred to in this section and §§ 63.21—63.23 (relating to applications for review and redetermination of contribution rates) may be obtained by writing to the Bureau of Employment Security, Department of Labor and Industry, Harrisburg, Pennsylvania 17121.]

## FILINGS AND APPEALS

### § 63.25 Filing methods.

#### (a) Applicability –

Except as otherwise provided in the Law or this chapter, a document shall be filed with UCTS in accordance with subsections (b) - (g) of this section.

#### (b) United States mail. The filing date will be determined as follows:

(1) The date of the official United States Postal Service postmark on the envelope containing the document, a United States Postal Service Form 3817 (Certificate of Mailing) or a United States Postal Service certified mail receipt.

(2) If there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt, the date of a postage meter mark on the envelope containing the document.

(3) If the filing date cannot be determined by any of the methods in paragraph (1) or (2), the filing date will be the date recorded by UCTS when it receives the document.

(c) Common carrier. A document may be delivered by a common carrier of property that is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board. The date of filing is the date the document was delivered to the common carrier, as established by a document or other record prepared by the common carrier in the normal course of business. If the date of delivery to the common carrier cannot be determined by the documents in the record, the date of filing will be the date recorded by UCTS when it receives the document.

#### (d) Fax transmission.

(1) The filing date will be determined as follows:

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

(ii) If the UCTS fax machine does not imprint a legible date, the date of transmission imprinted on the faxed document by the sender's fax machine.

(iii) If the faxed document is received without a legible date of transmission, the filing date will be the date recorded by UCTS when it receives the document.

(2) A party filing a document by fax transmission is responsible for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the document may not be properly or timely filed.

(e) Electronic transmission other than fax transmission. The filing date is the receipt date recorded by the UCTS electronic transmission system, if the electronic record is in a form capable of being processed by that system. A party filing by electronic transmission shall comply with UCTS instructions concerning format. A party filing by electronic transmission is responsible for using the proper format and for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the document may not be properly or timely filed.

(f) Personal delivery. The filing date will be the date the document was personally delivered to UCTS during its normal business hours.

(g) Additional and suspended methods.

(1) UCTS may prescribe additional filing methods. If UCTS prescribes an additional filing method, it will designate the date on which a document is filed by that method.

(2) UCTS may suspend one or more of the filing methods prescribed by subsections (b) - (g)(1) when it determines, in its discretion, that such method is obsolete, impractical, inefficient or infrequently used.

### **§ 63.26 - Appeal to the Secretary**

(a) If an employer files an application for review and redetermination of its contribution rate under section 301(e)(2) of the Law (43 P.S. § 781(e)(2)) and the employer is aggrieved by the determination of UCTS, the employer may appeal to the Secretary or the Secretary's designee within 30 days of the mailing date of the UCTS determination.

(b) If UCTS issues an assessment under section 304 of the Law (43 P.S. § 784) and the person to whom the assessment is directed is aggrieved by the assessment, the person may appeal to the Secretary or the Secretary's designee by filing a petition for reassessment within the time allowed by section 304.

(c) If an employer applies for a refund or credit under section 311 of the Law (43 P.S. § 791) and the employer is aggrieved by the determination of UCTS, the employer may appeal to the Secretary or the Secretary's designee within thirty (30) days of the mailing date of the UCTS determination.

(d) The following provisions apply to an appeal under subsection (a), (b) or (c):

(1) The appellant shall file the appeal with the UC Tax Review Office at the address indicated in the UCTS determination or assessment and in the manner prescribed by the UC Tax Review Office, and serve a copy on UCTS.

(2) The appellant shall set forth in the appeal all factual assertions and legal arguments that are the basis for the appeal. The Secretary or the Secretary's designee may not consider any factual or legal grounds for relief that are not set forth in the appeal.

(3) The decision of the Secretary or the Secretary's designee is the final decision of the Department.

**§ 63.31. [General requirement] Applicability and definitions.**

(a) [Whenever a claimant is paid unemployment compensation, his former employers shall be charged for the amount of benefits paid to him. These charges shall be made in proportion to the wages paid by the employer during the base year of the claimant as compared with the total wages paid by all of his employers during the same period.] An employer that pays contributions may be relieved of benefit charges in accordance with section 302(a) of the Law (43 P.S. § 782(a)) and this chapter.

(b) [An employer may exert some control over the determination of his contribution rate by maintaining and providing necessary records and information which will enable the Bureau to charge employer accounts properly and relieve charges under certain conditions.] If an employer that makes payments in lieu of contributions satisfies the requirements of section 213 of the Law (43 P.S. § 773) for a calendar year, the employer may be relieved of charges, in accordance with section 302(a) of the Law (43 P.S. § 782(a)) and this chapter, for benefits paid on applications for benefits that take effect during that calendar year.

(c) The following words and terms, when used in §§ 63.31 - 63.37, have the following meanings, unless the context clearly indicates otherwise:

*Material change*—A substantial reduction in wages or in the number of hours or days ordinarily worked by the claimant employed in part-time work.

*Return to work* – Resumption of employment with an employer from whom the claimant had been separated, at the level of employment that existed immediately prior to the separation.

Separation from employment – A termination of the employment relationship, a suspension of active employment, or a reduction in the number of hours worked by the claimant.

**§ 63.32. Reasons for [separation] relief from benefit charges.**

[(a) Section 302(a) of the law (43 P.S. § 782(a)) provides that a base year employer may obtain relief from the charges for benefits paid to an ex-employee as explained in § 63.31 (relating to general requirement) if the claimant has separated from his most recent work for such employer due to one of the following reasons:

- (1) When the claimant leaves work without good cause attributable to his employment.
- (2) When the claimant is discharged for willful misconduct connected with his work.

(b) A base-year employer may obtain relief from charges for benefits paid as explained in § 63.31 (relating to general requirement) when the claimant works part-time for a base-year employer in addition to his full-time job, and such claimant, subsequent to a separation from his full-time job, continues his part-time work with the employer without a material change.]

(a) Pursuant to section 302(a)(1) of the Law (43 P.S. § 782(a)(1)), an employer may be granted relief from benefit charges in the following circumstances:

(1) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(e) of the Law (43 P.S. § 802(e)), which provides that an individual is ineligible for benefits if the individual is unemployed due to willful misconduct,

(2) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(b) of the Law (43 P.S. § 402(b)), which provides that an individual is ineligible for benefits if the individual voluntarily left work without a necessitous and compelling reason,

(3) When the claimant was separated from employment with the employer under conditions that would not be disqualifying under section 402(b) of the Law (43 P.S. § 802(b)), but do not involve good cause attributable to the claimant's employment,

(4) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 3 of the Law (43 P.S. § 752)), which provides that an individual must be unemployed through no fault of their own to be eligible for benefits,

(5) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(e.1) of the Law (43 P.S. § 802(e.1)), which provides that an individual is ineligible for benefits if the individual is unemployed due to failure to submit to and/or pass a drug test, or

(6) When the claimant was separated due to a major natural disaster declared by the President of the United States.

(b) Pursuant to section 302(a)(2) of the Law (43 P.S. § 782(a)(2)), an employer may be granted relief from benefit charges when the claimant continues to work part-time for the employer after being separated from other employment.

(c) Pursuant to section 302(a)(2.1) of the Law (43 P.S. § 782(a)(2.1)), an employer may be granted relief from benefit charges when the claimant was separated due to a cessation of business of 18 months or less caused by a disaster.

**§ 63.33 [Information accompanying requests] Request for relief from benefit charges**

[(a) A Form UC-44FR “Request for Relief from Charges” under section 302(a) of the law (43 P. S. § 782(a)) shall be submitted in writing to the Bureau of Employment Security, Department of Labor and Industry, Harrisburg, Pennsylvania 17121.

(b) The request for relief from charges shall contain the following information:]

(a) An employer shall file a request with the Department in order to be granted relief from benefit charges.

(b) An employer’s request for relief from benefit charges shall contain all information required by the Department, including all of the following:

(1) The name and account number of the employer.

(2) The name of the claimant.

(3) The social security account number of the claimant.

[(4) The date of valid application for benefits by the claimant.

(5) The local office number.

(6) The date of financial decision.

- (7) The signature of the employer or that of his authorized representative.
- (8) The last day of work of the claimant.
- (9) The reason for the separation of the claimant from employment.]

(c) In addition to the information required by subsection (b), a request for relief from benefit charges based on a claimant's separation from employment shall contain a statement of the facts surrounding the most recent separation of the claimant from the employer requesting relief and the date of the separation.

(d) In addition to the information required by subsection (b), an employer making a request for relief from benefit charges based on continuing part-time work shall include a statement of the facts concerning the part-time employment of the claimant which shall contain all of the following information:

(1) The date the claimant was hired.

(2) The number of hours or days of work and the pay available to the claimant before and after the claimant's separation from other employment.

(e) An employer shall file a request for relief from benefit charges with the Department in the same manner that documents shall be filed with UCTS pursuant to § 63.25 (relating to filing methods). The filing date of the request will be determined in accordance with § 63.25.

(f) Notwithstanding subsection (e), the Department may prescribe additional filing methods that it determines, in its discretion, to be advisable or expedient. If the Department prescribes an additional filing method, it will designate the date on which a request is filed by that method.

**§ 63.34. [Requests as to voluntary separations or discharge of employe for willful misconduct] Reserved.**

[(a) A request filed under section 302(a)(1) of the law (43 P. S. § 782(a)(1)) shall contain a concise but comprehensive statement of facts surrounding the most recent separation of the claimant and the date of such separation from the employer requesting relief.

(b) If an employer who has applied for relief from charges because of the separation or discharge of an employe subsequently reemploys the employe, the employer shall notify the Bureau of the fact and of the date of rehire within 15 days thereof. The notification

shall state the name and social security account number of the claimant and the name and account number of the employer.]

**§ 63.35. [Requests as to part-time workers] Reserved.**

[(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Material change*—A substantial reduction in wages or in the number of hours or days ordinarily worked by the claimant employed in part-time work.

*Part-time work*—Work other than normal full-time work of a claimant with a regular base-year employer which is ordinarily performed for less than the total number of hours or days customarily worked in the business, occupation or industry.

(b) *Information.* A request filed under the provisions of this section shall contain a concise but comprehensive statement of facts concerning the part-time employment of the claimant. The statement shall include the following information:

(1) The date the claimant was hired.

(2) The number of hours or days of work and the pay available to the claimant before and after separation from the full-time job.

(c) *Certification.* The request shall be certified that the information provided is true and correct. The certification shall be signed by the employer making the request or his authorized representative.

(d) *Changes of employment situation.* If an employer who has applied for relief under section 302(a)(2) of the Law (43 P. S. § 782(a)(2)) subsequently changes the employment situation of a part-time employee, it shall be the duty of the employer to notify the Bureau of such fact within 15 days. The notification shall state the name and social security account number of the claimant and the name and account number of the employer.]

**§ 63.36. Time limits for [filing for] requesting relief from benefit charges.**

(a) [Where] If an employer is requesting relief from benefit charges on the basis of a separation that occurs on or before the date the claimant files an application for benefits or on the basis of continuing part-time work, the employer shall file the request [the last separation is the basis for establishing an application for benefits, a Form UC-44FR (Request for Relief from Charges) shall be filed] with the [Bureau] Department within 15 days after the date of [“Financial Decision” shown on the face of] the first eligible

[Form UC-44F ( ) Notice of Financial Determination ( ) as] issued by the [Bureau] Department [on the basis of this] pursuant to the claimant's application for benefits.

(b) [If a claimant returns to work for a base-year employer after establishing a benefit year, that is a 52-week period beginning with the date of the first valid Application for Benefits, and is subsequently separated from employment during the benefit year, any] If an employer is requesting relief from benefit charges on the basis of a separation that occurs after the claimant files an application for benefits, the employer shall file the request [made by the separating employer for relief from charges must be filed] within [30 days from the last day worked] 15 days after the date of the Department's earliest notice indicating that the claimant is claiming benefits subsequent to the separation and that the employer may request relief from benefit charges.

(c) (1) If an employer requests relief from benefit charges in accordance with subsection (a) and the Department grants relief, relief will begin with the earliest week for which the claimant is eligible for benefits pursuant to the claimant's application for benefits.

(2) If an employer requests relief from benefit charges in accordance with subsection (b) and the Department grants relief, relief will begin with the earliest week for which the claimant is eligible for benefits following the last day worked.

(3) A request for relief from benefit charges not filed within the time limitations prescribed in subsections (a) or (b) [shall be] is effective only with respect to charges resulting from benefits paid for weeks ending [15 or more days subsequent to] on or after the date the late request is filed with the [Bureau] Department.

[(d) A request for relief from charges will be considered as filed with the Bureau on the date the request is postmarked or, if the request is otherwise delivered, on the date such request is received in the central office or in the local or district office of the Bureau.]

### **§ 63.36.1 Duration of relief from benefit charges and notice of changed circumstances**

(a) Subject to the requirements of sections 63.33 and 63.36, relief from benefit charges granted to an employer on the basis of a claimant's separation from employment remains in effect until the claimant returns to work for the employer or until the end of the period for which relief is authorized by section 302(a) of the Law (43 P.S. § 782(a)), whichever occurs first.

(b) An employer that is granted relief from benefit charges on the basis of a claimant's separation from employment shall notify the Department within fifteen (15) days if the

claimant returns to work for that employer. The employer shall include with the notification the claimant's name and social security number, the employer's name and account number and the date when reemployment commenced.

(c) An employer that is granted relief from benefit charges on the basis of continuing, part-time work shall notify the Department within fifteen (15) days if the employment situation of the claimant changes. The employer shall include with the notification the claimant's name and social security number and the employer's name and account number.

**§ 63.41. Requests.**

An employer who elects to have [his] its debit reserve account balance adjusted [to zero] under section[s 301.1(f) and] 302(c) of the Law (43 P. S. § [§ 781.1(f) and] 782(c)) shall submit a request [in writing] for the adjustment to the Department, in the manner prescribed by the Department and containing all information required by the Department.

**§ 63.42. Time period for filing and revocability.**

(a) An employer shall file a [A] request for adjustment of a debit reserve account balance [to zero shall be filed on or after January 1,] on or after the date of the Contribution Rate Notice for the calendar year immediately following the computation date corresponding to the adjustment, but not later than April 30 of [the] that calendar year [immediately following the computation date for the determination of contribution rates].

(b) The [request may not be revocable] employer may not revoke the request for any cause [after] more than ten days [from] after the date of filing.

**§ 63.43. [Date of filing] Reserved.**

[The date of filing of a request shall be considered as the date on which the request is postmarked. Should the request be delivered in some other way the date of receipt in any field or administrative office of the Bureau shall be considered the date of filing.]

**§ 63.51. [Form UC-1] Initial and renewed registration.**

[Form UC-1, Employer's Initial Statement, shall be filed by each employer, whether or not he is liable for the payment of contributions, for whom any individual has performed services in this Commonwealth subsequent to December 31, 1935. The form shall be filed immediately after services are first performed for the employer.]

(a) Pursuant to section 315(a)(1) of the Law (43 P.S. § 795(a)(1)), an employer shall register with the Department within 30 days after services are first performed for the employer.

(b) If an employer that has stopped filing reports in accordance with § 63.52(b) (relating to quarterly reports from employers) or has not provided employment for 1 year or longer resumes providing employment, the employer shall file a new registration with the Department within 30 days after it resumes providing employment.

**§ 63.52. [Form UC-2.] Quarterly reports from employers**

[(a) Form UC-2, Employer's Report for Unemployment Compensation, and Form UC-2A, Employer's Quarterly Report of Wages Paid to Each Employee, shall be filed by each employer liable for the payment of contributions, on or before the last day of the month which immediately follows the end of the calendar quarter for which the reports are filed.

(b) Form UC-2 and Form UC-2A shall be filed for each calendar quarter, whether or not the employer has paid wages during the calendar quarter.

(c) The Bureau may require an employer who has discontinued operation of his organization, trade or business in this Commonwealth to file reports immediately upon discontinuance of an operation.

(d) If the day on which Forms UC-2 and UC-2A are otherwise required to be filed is a Saturday, Sunday or a legal holiday, the reports may be filed on the first subsequent day which is not a Saturday, Sunday or a legal holiday.

(e) The day on which reports are postmarked shall be deemed the day on which they are filed.

(f) An employer who has been required to file Form UC-2 may be relieved of filing the report only upon written application to the Bureau to be so relieved. The application shall certify that he no longer furnishes employment as defined in the Law (43 P. S. § 753). The Bureau may, however, relieve an employer from filing reports upon finding that the employer no longer furnishes employment as defined in the Law (43 P. S. § 753), at any time, on its own motion.]

(a) Required reports- An employer shall file the following reports for each calendar quarter, regardless of whether the employer has paid wages during the calendar quarter:

(1) The periodic report to establish the amount of contributions due, known as the Employer's Report for Unemployment Compensation.

(2) The periodic report showing the amount of wages paid to each employe, known as the Employer's Quarterly Report of Wages Paid to Each Employe.

(b) Termination of Reporting - An employer may stop filing reports required by subsection (a) if it certifies in writing that it no longer provides employment as defined in section 4 of the Law (43 P.S. § 753) or the Department determines that the employer no longer provides such employment.

(c) Contents of reports - An Employer's Report for Unemployment Compensation shall contain the total amount of wages paid during the calendar quarter, the amount of wages paid during the calendar quarter that does not exceed the limitation in section 4(x)(1) of the Law (43 P. S. §753(x)(1)), the amount of contributions due, and any other information the Department requires. An Employer's Quarterly Report of Wages Paid to Each Employe shall contain the name and social security number of each employe to whom wages were paid during the calendar quarter, the amount of wages paid to each employe, the number of credit weeks for each employe, and any other information the Department requires.

(d) Due date -

(1) An employer shall file reports required by subsection (a) on or before the last day of the month that immediately follows the end of the calendar quarter for which the reports are filed. If the day on which the reports are required to be filed is a Saturday, Sunday or legal holiday, the employer may file them on the first subsequent day that is not a Saturday, Sunday or legal holiday.

(2) The Department may require an employer that has discontinued operation of its organization, trade or business in the Commonwealth to file the reports required by subsection (a) immediately.

(e) Reporting methods - Except as otherwise prescribed by the Department pursuant to subsection (g), for calendar quarters beginning on or after January 1, 2011, an employer shall make the reports required by subsection (a) through an electronic filing system that the Department prescribes.

(f) Filing date - The filing date of a report made pursuant to subsection (e) is the receipt date recorded by the electronic filing system.

(g) Additional reporting methods

(1) The Department may prescribe additional methods for employers to make the reports required by subsection (a). If the Department prescribes an additional method to make a report, it will designate the date on which a report made by that

method is filed. The Department may suspend use of one or more of the methods of making reports prescribed in subsection (e) or pursuant to this paragraph when it determines, in its discretion, that the method is obsolete, impractical, or infrequently used.

(2) The Department may limit a class of employers to one or more methods of making the reports required by subsection (a), or limit a method of making the reports to a class or classes of employers.

(h) Waiver – Upon a showing of good cause the Department may allow an employer to make the reports required by subsection (a), to file such reports, or both, by a method other than as provided in subsections (e), (f) and (g).

**§ 63.58. [Penalties for failure to file] Reserved.**

[The penalty for failure to file reports as provided in section 206 of the Law (43 P. S. § 766) may not apply to the filing of Form UC-2 with respect to any reporting period during which the employer paid no wages subject to contributions.]

**§ 63.59. PEO quarterly reports**

(a) Method and content of report – A report required by section 315(a)(4) of the Law (43 P.S. § 795(a)(4)) shall be made through the electronic filing system prescribed by the Department for that purpose, and shall include all information required by that system.

(b) Filing date - The filing date of a report required by section 315(a)(4) of the Law is the date indicated on the confirmation page displayed upon completion of the filing process.

**§63.60. Mass layoff report**

(a) An employer that lays off or separates 50 or more individuals within any 7-day period shall provide all information that the Department requires for processing the individuals' applications and claims for unemployment compensation.

(b) The employer shall file the report required by subsection (a) in accordance with the following.

(1) The employer shall file the report not later than 5 business days prior to the first layoff or separation, unless the Department extends the due date for the report for good cause.

(2) The employer shall file the report in the same manner that documents shall be filed with UCTS pursuant to § 63.25 (relating to filing methods). The filing date of the report will be determined in accordance with § 63.25.

**§ 63.61. [Voluntary contributions to Unemployment Compensation Fund.]**  
**Reserved**

[(a) Any employer who wishes to take advantage of the privilege afforded by voluntary contributions to the Unemployment Compensation Fund shall pay his voluntary contribution in strict conformity with section 302(b) of the Law (43 P. S. § 782(b)). The amount shall be included in the computation or recomputation of the rate for any calendar year only if it is paid within 120 days after the beginning of the year.

(b) Irrespective of any action by the Bureau, the employer shall be responsible for determining the amount he wishes to pay and he shall pay that amount, unconditionally, within the 120-day period.

(c) After voluntary contributions are accepted by the Bureau, they will not be refunded or allowed as a credit to pay contributions due on taxable wages.]

**§ 63.62. [Assignment of contribution credit.]** **Reserved**

[(a) Contribution credit which arose as a result of the 1949 and 1951 experience rating amendments to the Law (43 P. S. § § 781 and 781.1) may be transferred to a successor-in-interest or to any assignee. The credit shall be used solely for the payment of contributions, interest or penalties owing under the Law and may not be refunded.

(b) Request for the assignment of nonrefundable credit shall be made by submitting the request in duplicate and shall contain the essential information required.

(c) Credit may be transferred to more than one assignee, in which case the request shall be submitted in duplicate for each assignee.]

**§ 63.63. Agreement to compromise**

(a) An employer's [A]application for compromise of contributions, interest or penalties under the provisions of section 309.1 of the Law (43 P.S. § 789.1) shall be made [to the Bureau on Form UC – 168, Application for Agreement to Compromise. The application shall be properly executed under oath, by the employer or his authorized representative, and shall have attached thereto and made a part thereof such additional information as the Bureau may require.] in the manner that the Department prescribes, and containing all information that the Department requires.

(b) [All contributions, interest or penalties, other than those for which application for compromise is being made, and all legal costs incurred by the Bureau shall be paid in full before the Bureau will give consideration to an employer's application. The amount offered in compromise shall accompany each application but the Bureau may waive this requirement when the circumstances justify the exception.] An application for compromise is effective only if both of the following occur:

(1) The Department notifies the employer that the application is approved.

(2) The employer pays all contributions, reimbursement, interest, penalties and legal costs that it owes, other than those amounts the Department has agreed to forgo in the compromise, within the time and in the manner that the Department specifies.

#### **§ 63.64. Records to be kept by employer**

(a) *Content of records.* Each employer, whether or not liable for the payment of contributions, shall keep clear, accurate and complete employment and payroll records. The records shall [include] contain all of the following information on each worker, including workers whom the employer considers to be independent contractors, workers whom the employer considers not "employees" under the Law, and workers covered by an arrangement described in section 4(j)(2.1) of the Law (43 P.S. § 753(j)(2.1)):

- (1) Social security account number.
- (2) Full name.
- (3) Wage rate (hourly, daily or piece rate, weekly, monthly or annual salary).
- (4) Total remuneration paid for each pay period by type of payment (cash and fair market value of non-cash remuneration [cash value of payments in kind]).
- (5) Traveling or other business expenses actually incurred and accounted for, and the dates such expenses were incurred and were paid by the employer.
- (6) Place of employment.
- (7) All [Full-time]scheduled hours and hours worked.
- (8) Daily attendance record, showing the dates on which the worker actually worked, and time lost due to reasons other than lack of work.
- (9) If separated, the date and the reasons for separation.

(10) Number of credit weeks.

(11) Documentation of payments made to the worker, including bank statements, cancelled checks, copies of cancelled checks, check stubs, and electronic funds transfer records.

(12) If the worker is covered by an arrangement described in section 4(j)(2.1) of the Law (43 P.S. § 753(j)(2.1)), the contract between the employer and the other party to the arrangement.

(13) Any contract between the employer and the worker.

(14) If the employer considers the worker to be an independent contractor or otherwise not an “employee” under the Law, all records, documentation and evidence supporting that position.

(15) Federal and state tax returns for the periods when the worker was employed.

(b) *Location, [and] retention and inspection of records.*

(1) All employment and payroll records [and supporting evidence, as well as all other business records such as cash books, journals, ledgers and corporate minutes,] required by subsection (a) shall be retained either at the place of employment or at an established central recordkeeping office for at least 4 years after contributions relating to such records have been paid.

(2) Daily attendance records need not be retained for more than 2 years.

(3) The Department’s authorized representatives may inspect, transcribe or photocopy all employment and payroll records required by subsection (a) and all other business records, including, without limitation, cash books, journals, ledgers and corporate minutes [The records shall be open for inspection and transcription by authorized representation of the Bureau] at any reasonable time and as often as may be deemed necessary. [They shall be] The employer or entity in possession of the records shall keep the records in such condition that the information required may be readily obtained by representatives of the [Bureau] Department.

(c) *Scope.* For purposes of this section, the term “employer” includes any person for whom services are performed by an individual for remuneration.

### **§63.66. Power of attorney**

(a) Power of attorney. An employer may appoint an agent with full or limited power and authority to act on its behalf with the Department.

(b) Form of power of attorney. An employer's appointment of an agent shall be made in the manner prescribed by the Department and contain all information required by the Department.

### **§ 63.75. [Approval of reciprocal coverage elections.] Reserved**

[The Assistant Director for Tax Operations shall have the authority to approve or disapprove reciprocal coverage elections in accordance with the provisions of this subchapter.]

### **§ 63.91. [Purpose] Elections**

[This subchapter is intended to effectuate those provisions of the law which deal with filing a surety bond or depositing money or securities of equal value with the Department when a nonprofit organization elects to become liable for payments in lieu of contributions.]

(a) Duration. – A nonprofit organization electing to make payments in lieu of contributions shall make its election effective for a period of two, three or four calendar years. This subsection does not prevent a nonprofit organization from filing one or more successive elections.

(b) Transitional provision. – An election that is effective prior to the effective date of this section terminates on the later of the following dates, unless sooner terminated in accordance with the Law:

(1) December 31 of the third calendar year following the calendar year in which the election became effective.

(2) December 31 of the calendar year in which this regulation takes effect, if this regulation takes effect from January 1 through June 30, or December 31 of the calendar year immediately following the calendar year in which this regulation takes effect, if this regulation takes effect from July 1 through December 31.

### **§ 63.93. Filing of surety bond.**

Nonprofit organizations subject to the provisions of this subchapter electing to file a surety bond shall file with the [local Field Accounting Office of the Bureau] Department

a surety bond issued [equal to 1.0% of the employer's taxable wages paid for subject employment for the most recent four calendar quarters prior to the election to make payments in lieu of contributions or a surety bond in an amount set by the Department, such bond to be executed by an approved bonding company.] by an insurance company with a certificate of authority to provide such coverage in the Commonwealth. The term of the surety bond shall coincide with the period for which the employer elects to make payments in lieu of contributions. The surety bond shall secure reimbursement of benefit payments that are based on wages paid during the period of the election, including benefit payments made after the period of the election, together with interest and penalties.

**§ 63.94. Filing of security deposit.**

(a) In lieu of a surety bond, as prescribed in §63.93 (relating to filing of surety bond), nonprofit organizations subject to this subchapter may deposit money[s], in [the] a form [of bank-guaranteed checks payable] acceptable to the Department [of Labor and Industry] or securities [of equal present monetary value,] of a kind acceptable to the Department [Bureau, with the local Field Accounting Office of the Bureau, for transmittal to the Department in Harrisburg. A written receipt will be given to the employer depositing such moneys or securities. A copy of the receipt will be forwarded to the Bureau Accounting Division in Harrisburg and a copy retained in the local Field Accounting Office. Reference should also be made to §§ 63.95 — 63.97 (relating to moneys or securities received, securities pledged and return or sale of moneys or securities)].

(b) If a nonprofit organization deposits money or securities in connection with an election to make payments in lieu of contributions, it shall file a surety bond or deposit new collateral in connection with any subsequent election.

(c) Money or securities deposited with the Department in connection with an election to make payments in lieu of contributions secures reimbursement of both of the following, together with interest and penalties:

(1) Benefit payments that are based on wages paid during the period of the election, including benefit payments made after the period of the election.

(2) If the money or securities constitute new collateral in accordance with subsection (b), benefit payments that are based on wages paid during the period of the previous election, including benefit payments made after the period of the previous election.

### **§ 63.95. Money[s] or securities received.**

(a) *Money[s] received.* The Department will deposit all money[s] received with the State Treasurer, Commonwealth of Pennsylvania. Any interest [thereon] paid by the State Treasurer on money received from an employer shall accrue to the employer, subject to § 63.97 (relating to return or sale of money or securities).

(b) *Securities received.* Securities received will be deposited with the State Treasurer of the Commonwealth. The securities shall be assigned to the Department and be negotiable by the Department at any time. Interest or dividends accruing thereon shall be the property of the owner of the securities, subject to § 63.97 (return or sale of money or securities).

### **§ 63.96.1 Conversion to contributory status**

(a) If an employer that elects to make payments in lieu of contributions fails to provide a surety bond, moneys or securities in accordance with section 1106(d) of the Law (43 P.S. § 906(d)) and this subchapter, the employer's election is void.

(b) If an employer that elects to make payments in lieu of contributions provides a surety bond that ceases to be effective during the period of the election, and the employer does not provide a replacement bond for the remainder of the period of the election within 30 days after the Department requests the replacement bond, the Department will terminate the election. The Department will specify the effective date of the termination, which may be retroactive to the first day of the calendar quarter in which the bond ceases to be effective. A termination of an election under this subsection is not governed by section 1107(b) of the Law (43 P.S. § 907(b)).

(c) If an employer who elects to make payments in lieu of contributions subsequently becomes a contributory employer, and the employer owes reimbursement for benefit payments, or interest or penalties, the unpaid reimbursement, interest or penalties constitute unpaid contributions, interest or penalties for purposes of section 301(a)(2) of the Law (43 P.S. § 781(a)(2)). The date when benefits are paid is used to determine if the unpaid reimbursement, interest or penalties correspond to the period through the second calendar quarter of the preceding calendar year.

(d) If an employer who elects to make payments in lieu of contributions subsequently becomes a contributory employer, the employer remains liable to reimburse the Department for benefit payments made after the period of the election that are based on wages paid during the period of the election, in addition to the employer's liability for contributions on wages paid after the period of the election.

**§ 63.97. Return or sale of money[s] or securities.**

Any deposit of money[s] or securities received will be held until the organization's liability for payments is terminated. Upon termination of liability the deposit will be returned, minus any amount, including interest and penalty, due the Department. The Department is authorized to sell securities deposited to satisfy any amount due, in which event any interest and increase in value accruing on the securities will be applied to the amount due to the Department. [All securities pledged to the Department but held in escrow will be released through written advice by the Department upon termination of liability as a reimbursing nonprofit employer, but only if all amounts due have been paid.]

**§ 63.99. Assignment of rate of contribution.**

[A 2% rate will be assigned to employers who elect the reimbursement method of payment and subsequently choose to convert to contributory status. The employer will be treated as a "new or newly covered" employer during the period in which he was in reimbursement status, and this period will not be taken into account for any of the purposes of experience rating. The entry rate of 2% is available only on the occasion of the first conversion from reimbursement to contributory status. Thereafter, the rate of contribution may not be less than the standard rate subject to adjustment under section 301.1 of the Law (43 P. S. § 801.1).]

If an employer who elects to make payments in lieu of contributions subsequently becomes a contributory employer, the employer's rate of contribution shall be determined in accordance with the following:

(1) Wages paid by the employer during the period of the election, employee contributions paid on those wages, and benefit payments based on those wages are not taken into account for purposes of experience rating.

(2) If the employer was a contributory employer before the period of the election and the employer's reserve account has not been terminated pursuant to section 302(d) of the Law (43 P.S. § 782(d)), the employer is assigned a rate of contribution in accordance with section 301(a)(1) or section 301.1 of the Law (43 P. S. § 781(a)(1) or § 781.1)), whichever is applicable.

(3) If the employer was a contributory employer before the period of the election and the employer's reserve account has been terminated pursuant to section 302(d) of the Law (43 P.S. § 782(d)), or the employer was not a contributory employer before the period of the election, the employer is assigned a rate of contribution in accordance with section 301(a)(3) or (4) of the Law (43 P.S. § 781(a)(3) or (4)), whichever is applicable, until the employer is no longer subject to those provisions.

(4) A rate of contribution determined in accordance with clause (2) or (3) is subject to any adjustments required under the rate provisions of the Law.

#### **Subchapter D. PAYMENT BY ELECTRONIC TRANSFER**

##### **§ 63.110. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Automated Clearing House (ACH)* - A Federal reserve bank, or an organization established by agreement with the National Automated Clearinghouse Association, which operates as a clearing house for transmitting or receiving entries between financial institutions and financial institution accounts, and which authorizes an electronic transfer of funds between the financial institutions or financial institution accounts.

*ACH credit* - A transaction in which the payer, through its own financial institution, originates an ACH transaction crediting the Department's financial institution account and debiting its own financial institution account for the amount of the payment to the Department.

*ACH debit* - A transaction in which the Department, through its designated depository financial institution, originates an ACH transaction debiting the payer's financial institution account and crediting the Department's financial institution account for the amount of the payment to the Department.

*Card processor* - An entity which provides credit card and debit card payment services on behalf of the Department.

*Credit card* - A device or instrument which entitles the holder to obtain money, goods, services or anything of value on credit and is accepted by the card processor.

*Debit card* - A device or instrument which entitles the holder to obtain and transfer money from an account or accounts with a financial institution and is accepted by the card processor.

*Electronic transfer* - A transfer of funds by ACH Credit, ACH Debit, credit card or debit card.

##### **§ 63.111. Electronic transfer requirement, waiver and penalty.**

(a) An employer shall make payment for a calendar quarter by electronic transfer if the employer's liability for contributions, interest and penalty for that calendar quarter equals

or exceeds \$5,000 and shall continue to pay by electronic transfer thereafter regardless of whether the liability threshold is reached or exceeded for any subsequent quarter.

(b) An employer that has elected to make payments in lieu of contributions shall make payment for a billing period by electronic transfer if the employer's liability for reimbursement, interest and penalties for that billing period equals or exceeds \$5,000 and shall continue to pay by electronic transfer thereafter regardless of whether the liability threshold is reached or exceeded for any subsequent billing period.

(c) Upon a showing of good cause, the Department may exempt an employer from the electronic transfer payment requirements of this subchapter.

(d) If an employer subject to the electronic transfer payment requirements of this subchapter makes any payment other than as required, the Department will charge a penalty of 10% of the payment, up to a maximum of \$500 with a minimum of \$25 per occurrence. Such sums will be collectible in the manner provided in sections 308.1, 308.2, 308.3 and 309 of the Law (43 P.S. §§ 788.1, 788.2, 788.3 and 789).

**§ 63.112. Voluntary participation.**

An employer that is not required to make payments by electronic transfer, and an individual liable for an overpayment of unemployment compensation benefits, may make payments by electronic transfer in accordance with the provisions of this subchapter.

**§ 63.113. Date of payment.**

(a) A payment by ACH debit is made on the earliest date when both of the following apply:

(1) The Department may exercise the payer's authorization to debit its financial institution account.

(2) All information necessary to process the payment has been received by the Department in the manner prescribed by the Department.

(b) A payment by credit card or debit card is made on the date when all information necessary to effectuate the payment is given to the card processor in a manner prescribed by the card processor.

(c) A payment by ACH Credit is made on the date when the payment is received in the Department's financial institution account.

(d) If the date when a payment is made by electronic transfer, as determined under subsections (a) through (c), is delayed as a result of a human error or a technological failure by the Department, the Department's agents or the banking system that is beyond the employer's control, the Department will redetermine the date of payment as if the error or failure had not occurred.

**§ 63.114. Miscellaneous provisions.**

(a) Information necessary to effectuate a payment by ACH debit includes the name of the financial institution, the financial institution's routing number and the account number of the account to be debited. Information necessary to effectuate a payment by credit card or debit card shall be determined by the card processor.

(b) If a payment is made by electronic transfer and subsequently the transfer of funds to the Department is rescinded, the liability to which the payment was applied will be reinstated as if the payment was not made.

(c) The Department will provide one or more methods for payers to verify that payments by electronic transfer have been received by the Department.

(d) The Department may provide refunds by ACH Credit.



COMMONWEALTH OF PENNSYLVANIA

August 26, 2010

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

**Re: Proposed Rulemaking**  
**Department of Labor and Industry**  
**34 Pa. Code, Part II, Subpart A, Unemployment Compensation**  
**Chapter 63, Responsibilities of Employers**  
**No. 12-93**

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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 63, Responsibilities of Employers, of the Unemployment Compensation regulations.

Comments, suggestions or questions should be directed to Sean F. Creegan, Deputy Chief Counsel, 10<sup>th</sup> 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](mailto: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  
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](http://www.dli.state.pa.us)

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

I.D. NUMBER: 12-93

SUBJECT: 34 Pa. Code, Part II, Subpart A., Unemployment Compensation  
Chapter 63. Responsibilities of Employers

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 |

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**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON LABOR RELATIONS
8/26/10	<u>Danielle Carley</u>	MAJORITY CHAIRMAN <u>Robert E. Belfanti, Jr.</u>
8/26/10	<u>Jennifer Kotac</u>	MINORITY CHAIRMAN <u>Gene DiGirolamo</u>
		SENATE COMMITTEE ON
8/26	<u>Emilio Restagno</u>	MAJORITY CHAIRMAN <u>John R. Gordner</u>
8/26	<u>BA</u>	MINORITY CHAIRMAN <u>Christine M. Tartaglione</u>
8/26/10	<u>Cheryl Johnson</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
8/26/10	<u>m. Lattin</u>	LEGISLATIVE REFERENCE BUREAU