

Final Rule

Friday
December 3, 1982

Part V

Department of Labor

Employment and Training Administration

Unemployment Compensation for Federal
Civilian Employees; Final Rule

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 609****Unemployment Compensation for
Federal Civilian Employees****AGENCY:** Employment and Training
Administration, Labor.**ACTION:** Final rule.

SUMMARY: These are the Department of Labor's revised regulations for implementing the program of Unemployment Compensation for Federal Civilian Employees (UCFE Program). Changes to the regulations incorporate statutory amendments, which principally concern the finality of Federal findings as to the reasons for termination of Federal employment; the treatment of the Virgin Islands as a participating State in the Federal-State Unemployment Compensation Program; and which prescribe a new rule for determining the Federal share of the costs of benefits on joint claims under the UCFE Program and State unemployment compensation laws. One other statutory change affecting the UCFE Program that was overlooked in the proposed rule is added to this final rule. It pertains to the exclusion of commissioned officers of the National Oceanic and Atmospheric Administration (NOAA) from coverage under the UCFE Program and their coverage under the Unemployment Compensation Program for Ex-servicemembers effective March 25, 1980.

The regulations are also reorganized and revised to state the rights and obligations of claimants for the benefits and to clarify the respective duties and responsibilities of the Federal Government and the State agencies. The setting forth of this information in each part dealing with a separate unemployment compensation program conforms to the more recent practice in writing regulations for unemployment compensation and related benefit programs. The final regulations incorporate the substantive changes and improvements as set forth in the published proposal.

EFFECTIVE DATE: January 3, 1983.**FOR FURTHER INFORMATION CONTACT:**

Bert Lewis, Administrator,
Unemployment Insurance Service,
Employment and Training
Administration, U.S. Department of
Labor, 601 "D" Street, N.W.,
Washington, D.C. 20213; telephone: (202)
376-7032 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The UCFE Program is a program financed by Federal funds to furnish unemployment benefits to eligible individuals who are separated from Federal employment and are unable to obtain work. The UCFE Program was created by Pub. L. 83-767, approved on September 1, 1954. It has been codified in 5 U.S.C. 8501-8508.

Part 609, Chapter V, Title 20 of the Code of Federal Regulations (20 CFR Part 609) implements the statute creating the UCFE Program, as most recently amended by Public Law 94-566 and Public Law 96-215. The proposal to revise the regulations was published in the *Federal Register* on January 23, 1981 (46 FR 7786), and this document contains the final revised regulations for Part 609.

Comments on the proposal published on January 23, 1981, were solicited through March 24, 1981, and the proposal was further reviewed in the Department. As a result of comments and review, a few changes have been made in the proposal. Also, changes have been made as a result of the statutory amendment relating to commissioned officers of the National Oceanic and Atmospheric Administration.

1. Commissioned officers of the National Oceanic and Atmospheric Administration were covered under the UCFE Program until March 25, 1980. First claims for unemployment compensation filed after that date are covered under the program of Unemployment Compensation for Ex-servicemembers (UCX Program; 20 CFR Part 614 and 5 U.S.C. Chapter 85), pursuant to an amendment to 5 U.S.C. 8521(a)(1) in Public Law 96-215 (94 Stat. 123). This coverage change is reflected in § 609.2(f)(2) and in the regulations for the UCX Program at 20 CFR 614.2(g).

2. The Nevada Employment Security Department commented that the revision of § 609.8 in assigning all Federal wages at the time of first claim filing would require a revision to Form ES-931 to allow inclusion of service and wages not previously reported.

While that is true, we foresee no problems with State agencies adopting this modification or the Federal agencies being able to furnish the requested information. No change is made in § 609.8 as proposed.

3. Section 609.1(d)(1) requires each State agency to forward a copy of each judicial or "administrative decision" ruling on an individual's entitlement to payment of UCFE or to credit for a waiting period. The Oregon Department of Human Resources requested a definition of the term "administrative decision" because their interpretation of the term includes nonmonetary

determinations. They also commented that the procedures outlined in § 609.1(d)(2), relating to procedures to assure nationwide uniformity in the application of the Act and the regulations, seem unnecessary.

"Administrative decision" as contemplated by the Department are first and second appeal level decisions concerning claims for UCFE. The phrase does not include or apply to monetary or nonmonetary determinations, which are identified in § 609.1(d) as determinations and redeterminations. No change is made in § 609.1(d).

The Department believes that it should notify the State agency of its view if a State agency's determination, redetermination, or decision (regarding an appeal) is inconsistent with the Department's interpretation of the Act or Part 609.

This will assure nationwide uniformity in the application of the Act and the regulations. No change is made in § 609.1(d)(2) as proposed.

4. The Oregon Department of Human Resources also commented that § 609.6(e)(2) appears to say that the State agency will wait 12 days before determining a UCFE claim on the basis of a claimant affidavit even though procedurally they are required to complete an affidavit as part of the initial claim process. Section 609.6(e)(2) does not differ from the current regulation as to when a determination of entitlement will be made absent timely Federal findings. However, we have suggested in a directive that State agencies consider taking the claimant affidavit (Form ES-935) at the time the "new claim" is filed, provided credible evidence of Federal civilian employment is available. If State agencies adopt this suggestion, it would assist in ensuring that first payments are being made promptly. However, this suggestion is not a procedural requirement nor is it required by § 609.6(e)(2). No change is made in this regulation.

5. In addition, a few minor proofing and technical errors were made in the proposed document as published in the *Federal Register* on January 23, 1981 (46 FR 7786). Those errors have been corrected.

Drafting Information

This document was prepared under the direction and control of the Administrator of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213; telephone (202) 376-7032 (this is not a toll-free number).

Classification—Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: 1. an annual effect on the economy of \$100 million or more; 2. a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or 3. significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

Information collection requirements contained in this regulation (§§ 609.1(d)(1), 609.5(a) and 609.6(e)(2)) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 1205-0163 (pertaining to § 609.1(d)(1)) and 1205-0179 (pertaining to §§ 609.5(a) and 609.6(e)(2)).

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because this rule only implements amendments to an individual entitlement program, and thus no economic impact is expected with respect to any small entities. Accordingly, no regulatory flexibility analysis is required.

Regulatory Flexibility Act Certification

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b), that the final regulations published hereinafter (20 CFR Part 609, Final Amendments to the Unemployment Compensation Program for Federal Employees Regulations) will not, if promulgated, have a significant economic impact on a substantial number of small entities because this is an individual entitlement program and affects only individuals applying for benefits under the Unemployment Compensation Program for Federal Employees.

Dated: November 29, 1982.

Raymond J. Donovan.

List of Subjects in 20 CFR Part 609

Unemployment Compensation for Federal Employees (UCFE),
Unemployment compensation.

Words of Issuance

Accordingly, Part 609 of Title 20 of the Code of Federal Regulations is revised as set forth below.

Signed at Washington, D.C., on November 29, 1982.

Albert Angrisani,
Assistant Secretary of Labor.

**PART 609—UNEMPLOYMENT
COMPENSATION FOR FEDERAL
CIVILIAN EMPLOYEES**

Subpart A—General Provisions

Sec.

- 609.1 Purpose and application.
- 609.2 Definitions of terms.

Subpart B—Administration of UCFE Program

- 609.3 Eligibility requirements for UCFE.
- 609.4 Weekly and maximum benefit amounts.
- 609.5 Claims for UCFE.
- 609.6 Determinations of entitlement; notices to individual.
- 609.7 Appeal and review.
- 609.8 The applicable State for an individual.
- 609.9 Provisions of State law applicable to UCFE claims.
- 609.10 Restrictions on entitlement.
- 609.11 Overpayments; penalties for fraud.
- 609.12 Inviolate rights to UCFE.
- 609.13 Recordkeeping; disclosure of information.
- 609.14 Payments to States.
- 609.15 Public access to Agreements.
- 609.16 Administration in absence of an Agreement.
- 609.17 Information, reports, and studies.

Subpart C—Responsibilities of Federal Agencies

- 609.20 Information to Federal civilian employees.
- 609.21 Findings of Federal agency.
- 609.22 Correcting Federal findings.
- 609.23 Furnishing additional information.
- 609.24 Reconsideration of Federal findings.
- 609.25 Furnishing other information.
- 609.26 Liaison with Department.

Authority: 5 U.S.C. 8508; Secretary's Order No. 4-75, 40 FR 18515; (5 U.S.C. 301). Interpret and apply secs. 8501-8508 of title 5, United States Code.

Subpart A—General Provisions**§ 609.1 Purpose and application.**

(a) *Purpose.* Subchapter I of chapter 85, title 5 of the United States Code, as amended by Pub. L. 94-566, 90 Stat. 2667, 5 U.S.C. 8501-8508, provides for a permanent program of unemployment compensation for unemployed Federal

civilian employees. The unemployment compensation provided for in Subchapter I is hereinafter referred to as unemployment compensation for Federal employees, or UCFE. The regulations in this part are issued to implement the UCFE Program.

(b) *First rule of construction.* The Act and the implementing regulations in this part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* The Act and the implementing regulations in this part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) *Effectuating purpose and rules of construction.* (1) In order to effectuate the provisions of this section, each State agency shall forward to the United States Department of Labor (hereafter Department), not later than 10 days after issuance, a copy of each judicial or administrative decision ruling on an individual's entitlement to payment of UCFE or to credit for a waiting period. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to UCFE or waiting period credit.

(2) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this part, the Department may at any time notify the State agency of the Department's view. Thereafter the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department's view and shall make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or this part, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies UCFE to a claimant, the steps outlined in paragraph (d)(2) of this section shall be followed by the State agency. If the

determination, redetermination, or decision in question awards UCFE to a claimant, the benefits are "due" within the meaning of section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), and therefore must be paid promptly to the claimant. However, the State agency shall take the steps outlined in paragraph (d)(2) of this section, and payments to the claimant may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the claimant; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of UCFE and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding UCFE or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the claimant.

(4)(i) If any determination, redetermination, or decision, referred to in paragraph (d)(2) or paragraph (d)(3) of this section, is treated as a precedent for any future UCFE claim or claim under the UCX Program (Part 614 of this chapter), the Secretary will decide whether the Agreement with the State entered into under the Act shall be terminated.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part, including any determination, redetermination, or decision referred to in paragraph (d)(3) of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

(5) A State agency may request reconsideration of a notice issued pursuant to paragraph (d)(2) of paragraph (d)(3) of this section, and shall be given an opportunity to present views and arguments if desired.

(6) Concurrence of the Department in a determination, redetermination, or

decision shall not be presumed from the absence of a notice issued pursuant to this section.

§ 609.2 Definitions of terms.

For the purposes of the Act and this part:

(a) "Act" means subchapter I of chapter 85, title 5, United States Code, 5 U.S.C. 8501-8508.

(b) "Agreement" means the agreement entered into pursuant to the Act between a State and the Secretary under which the State agency of the State agrees to make payments of unemployment compensation in accordance with the Act and the regulations and procedures thereunder prescribed by the Department.

(c) "Based period" means the base period as defined by the applicable State law for the benefit year.

(d) "Benefit year" means the benefit year as defined by the applicable State law, and if not so defined the term means the period prescribed in the agreement with the State or, in the absence of an Agreement, the period prescribed by the Department.

(e) "Federal agency" means any department, agency, or governmental body of the United States, including any instrumentality wholly or partially owned by the United States, in any branch of the Government of the United States, which employs any individual in Federal civilian service.

(f) "Federal civilian service" means service performed in the employ of any Federal agency, except service performed—

(1) By an elective official in the executive or legislative branches of the Government of the United States; (2) As a member of the Armed Forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration;

(3) By Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22 of the United States Code;

(4) Outside the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia, by an individual who is not a citizen of the United States;

(5) By an individual excluded by regulations of the Office of Personnel Management from civil service retirement coverage provided by Subchapter III of chapter 83 of title 5 of the United States Code because the individual is paid on a contract or fee basis;

(6) By an individual receiving nominal pay and allowances of \$12 or less a year;

(7) In a hospital, home, or other institution of the United States by a patient or inmate thereof;

(8) By a student-employee as defined by 5 U.S.C. 5351; that is: (i) A student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, or student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency as defined in section 5351; or (ii) any other student-employee, assigned or attached primarily for training purposes to such a hospital, clinic, or medical or dental laboratory operated by such an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management;

(9) By an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(10) By an individual employed under a Federal relief program to relieve the individual from unemployment;

(11) As a member of a State, county, or community committee under the Agricultural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless such body is composed exclusively of individuals otherwise in the full-time employ of the United States;

(12) By an officer or member of the crew on or in connection with an American vessel which is: (i) Owned by or bareboat chartered to the United States, and (ii) the business of which is conducted by a general agent of the Secretary of Commerce, and (iii) if contributions on account of such service are required under section 3305(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3305(g)) to be made to an unemployment fund under a State law;

(13) By an individual excluded by any other Federal law from coverage under the UCFE Program; or

(14) By an individual whose service is covered by the UCX Program to which Part 614 of this chapter applies.

(g) "Federal employee" means an individual who has performed Federal civilian service.

(h) "Federal findings" means the facts reported by a Federal agency pertaining to an individual as to: (1) Whether or not the individual has performed Federal civilian service for such an agency; (2) the period or periods of such Federal civilian service; (3) the individual's Federal wages; and (4) the reasons for termination of the individual's Federal civilian service.

(i) "Federal wages" means all pay and allowances, in cash and in kind, for Federal civilian service.

(j) "First claim" means an initial claim for unemployment compensation under the UCFE Program, the UCX Program (Part 614 of this chapter), a State law, or some combination thereof, whereby a benefit year is established under an applicable State law.

(k) "Official station" means the State (or country, if outside the United States) designated on a Federal employee's notification of personnel action terminating the individual's Federal civilian service (Standard Form 50 or its equivalent) as the individual's "duty station." If the form of notification does not specify the Federal employee's "duty station", the individual's official station shall be the State or country designated under "name and location of employing office" on such form or designated as the individual's place of employment on an equivalent form.

(l) "Secretary" means the Secretary of Labor of the United States.

(m) "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(n) "State agency" means the agency of the State which administers the applicable State law and is administering the UCFE Program in the State pursuant to an Agreement with the Secretary.

(o)(1) "State law" means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304, if the State is certified under section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(c).

(2) "Applicable State law" means the State law made applicable to a UCFE claimant by § 609.8.

(p)(1) "Unemployment compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular, additional, emergency, and extended compensation.

(2) "Regular compensation" means unemployment compensation payable to an individual under any State law, but not including additional compensation or extended compensation.

(3) "Additional compensation" means unemployment compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors.

(4) "Emergency compensation" means supplementary unemployment compensation payable under a

temporary Federal law after exhaustion of regular and extended compensation.

(5) "Extended compensation" means unemployment compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, 26 U.S.C. 3304 note, and Part 615 of this chapter, with respect to the payment of extended compensation.

(q) "Week" means, for purposes of eligibility for and payment of UCFE, a week as defined in the applicable State law.

(r) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to all employment and earnings, and in the same manner and to the same extent for the purposes of the UCFE Program, as if the individual filing for UCFE were filing a claim for State unemployment compensation.

Subpart B—Administration of UCFE Program

§ 609.3 Eligibility requirements for UCFE.

An individual shall be eligible to receive a payment of UCFE or to waiting period credit with respect to a week of unemployment if:

(a) The individual has Federal civilian service and Federal wages in the base period under the applicable State law;

(b) The individual meets the qualifying employment and wage requirements of the applicable State law, either on the basis of Federal civilian service and Federal wages alone or in combination with service and wages covered under a State law or under the UCX Program (Part 614 of this chapter);

(c) The individual has filed an initial claim for UCFE and, as appropriate, has filed a timely claim for waiting period credit or a payment of UCFE with respect to that week of unemployment; and

(d) The individual is totally, part-totally, or partially unemployed, and is able to work, available for work, and seeking work within the meaning of or as required by the applicable State law, and is not subject to disqualification under this Part or the applicable State law, with respect to that week of unemployment.

§ 609.4 Weekly and maximum benefit amounts.

(a) *Total unemployment.* The weekly amount of UCFE payable to an eligible individual for a week of total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of total unemployment as determined under the applicable State law.

(b) *Partial and part-total unemployment.* The weekly amount of UCFE payable for a week of partial or part-total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of partial or part-total unemployment as determined under the applicable State law.

(c) *Maximum amount.* The maximum amount of UCFE which shall be payable to an eligible individual during and subsequent to the individual's benefit year shall be the maximum amount of all unemployment compensation that would be payable to the individual as determined under the applicable State law.

(d) *Computation rules.* (1) The weekly and maximum amounts of UCFE payable to an individual under the UCFE Program shall be determined under the applicable State law to be in the same amount, on the same terms, and subject to the same conditions as the State unemployment compensation which would be payable to the individual under the applicable State law if the individual's Federal civilian service and Federal wages assigned or transferred under this Part to the State had been included as employment and wages covered by that State law.

(2) All Federal civilian service and Federal wages for all Federal agencies shall be considered employment with a single employer for purposes of the UCFE Program.

§ 609.5 Claims for UCFE.

(a) *First claims.* A first claim for UCFE shall be filed by an individual in any State agency of any State (or Canada) according to the applicable State law, and on a form prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(b) *Weekly claims.* Claims for waiting week credit and payments of UCFE for weeks of unemployment shall be filed in any State agency (or Canada) at the times and in the manner as claims for State unemployment compensation are filed under the applicable State law, and on forms prescribed by the Department which shall be furnished to the

individual by the State agency where the claim is filed.

(c) *Secretary's standard.* The procedure for reporting and filing claims for UCFE and waiting period credit shall be consistent with this Part 609 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (*Employment Security Manual*, Part V, sections 5000 *et seq.*).

§ 609.6 Determinations of entitlement; notices to individual.

(a) *Determination of first claim.* The State agency whose State law applies to an individual under § 609.8 shall, promptly upon the filing of a first claim for UCFE, determine whether the individual is eligible and whether a disqualification applies, and, if the individual is found to be eligible, the individual's benefit year and the weekly and maximum amounts of UCFE payable to the individual.

(b) *Determinations of weekly claims.* The State agency promptly shall, upon the filing of a claim for payment of UCFE or waiting period credit with respect to a week, determine whether the individual is entitled to a payment of UCFE or waiting period credit with respect to such week, and, if entitled, the amount of UCFE or waiting period credit to which the individual is entitled.

(c) *Redetermination.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to State unemployment compensation under the applicable State law shall apply to determinations pertaining to UCFE.

(d) *Notices to individual.* The State agency promptly shall give notice in writing to the individual of any determination or redetermination of a first claim, and, except as may be authorized under paragraph (g) of this section, of any determination or redetermination of any weekly claim which denies UCFE or waiting period credit or reduces the weekly amount or maximum amount initially determined to be payable. Each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for State unemployment compensation; and where information furnished by a Federal agency was considered in making the determination, or redetermination, the notice thereof shall include an explanation of the right of the individual to seek additional

information pursuant to § 609.23 and/or a reconsideration of Federal findings pursuant to § 609.24.

(e) *Obtaining information for claim determinations.* (1) Information required for the determination of claims for UCFE shall be obtained by the State agency from claimants, employers, and others, in the same manner as information is obtained for claim purposes under the applicable State law, but information (including additional and reconsidered Federal findings) shall be obtained from the Federal agency that employed the UCFE claimant as prescribed in §§ 609.21 through 609.25. On request by a UCFE claimant, the State agency shall seek additional information pursuant to § 609.23 and reconsideration of Federal findings pursuant to § 609.24.

(2) If Federal findings have not been received from a Federal agency within 12 days after the request for information was submitted to the Federal agency, the State agency shall determine the individual's entitlement to UCFE on the basis of an affidavit completed by the individual on a form prescribed by the Department. In addition, the individual shall submit for examination by the State agency any documents issued by the Federal agency (for example, Standard Form 50 or W-2) verifying that the individual performed services for and received wages from such Federal agency.

(3) If Federal findings received by a State agency after a determination has been made under this section contain information which would result in a change in the individual's eligibility for or entitlement to UCFE, the State agency promptly shall make a redetermination and notify the individual, as provided in this section. All payments of UCFE made prior to or after such redetermination shall be adjusted in accordance therewith.

(f) *Promptness.* Full payment of UCFE when due shall be consistent with this Part 609 and shall be made with the greatest promptness that is administratively feasible, but the provisions of Part 640 of this chapter (relating to promptness of benefit payments) shall not be applicable to the UCFE Program.

(g) *Secretary's standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for UCFE, shall be consistent with this Part 609 and with the Secretary's "Standard for Claim Determinations—Separation Information" (*Employment Security Manual*, Part V, sections 6010 *et seq.*).

§ 609.7 Appeal and review.

(a) *Applicable State law.* The provisions of the applicable State law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to State unemployment compensation shall apply to determinations and redeterminations of eligibility for or entitlement to UCFE and waiting period credit. Any such determination or redetermination shall be subject to appeal and review only in the manner and to the extent provided in the applicable State law with respect to determinations and redeterminations of entitlement to State unemployment compensation.

(b) *Rights of appeal and fair hearing.* The provisions on right to appeal and opportunity for a fair hearing with respect to claims for UCFE shall be consistent with this Part and with sections 303(a)(1) and 303(a)(3) of the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3).

(c) *Promptness on appeals.* (1) Decisions on appeals under the UCFE Program shall accord with the Secretary's "Standard for Appeals Promptness—Unemployment Compensation" in Part 650 of this chapter, and with § 609.1(d).

(2) Any provision of an applicable State law for advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, shall apply to proceedings involving claims for UCFE.

(d) *Appeal and review by Federal agency.* If a Federal agency believes that a State agency's determination or redetermination of an individual's eligibility for or entitlement to UCFE is incorrect, the Federal agency may seek appeal and review of such determination or redetermination in the same manner as an interested employer may seek appeal and review under the applicable State law.

§ 609.8 The applicable State for an individual.

(a) *The applicable State.* The applicable State for an individual shall be the State to which the individual's Federal civilian service and Federal wages are assigned or transferred under this section. The applicable State law for the individual shall be the State law of such State.

(b) *Assignment of service and wages.* (1) An individual's Federal civilian service and Federal wages shall be assigned to the State in which the

individual had his or her last official station prior to filing a first claim unless:

(i) At the time a first claim is filed the individual resides in another State in which, after separation from Federal civilian service, the individual performed service covered under the State law, in which case all of the individual's Federal civilian service and wages shall be assigned to the latter State; or

(ii) Prior to filing a first claim an individual's last official station was outside the States, in which case all of the individual's Federal civilian service and Federal wages shall be assigned to the State in which the individual resides at the time the individual files a first claim, provided the individual is personally present in a State when the individual files the first claim.

(2) Federal civilian service and wages assigned to a State in error shall be reassigned for use by the proper State agency. An appropriate record of a reassignment shall be made by the State agency which makes the reassignment.

(3) Federal civilian service and Federal wages assigned to a State shall be transferred to another State where such transfer is necessary for the purposes of a combined-wage claim filed by an individual.

(c) *Assignment deemed complete.* All of an individual's Federal civilian service and Federal wages shall be deemed to have been assigned to a State upon the filing of a first claim. Federal civilian service and Federal wages shall be assigned to a State only in accordance with paragraph (b) of this section.

(d) *Use of assigned service and wages.* All assigned Federal civilian service and Federal wages shall be used only by the State to which assigned or transferred in accordance with paragraph (b) of this section.

§ 609.9 Provisions of State law applicable to UCCE claims.

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part or the procedures thereunder prescribed by the Department, the terms and conditions of the applicable State law which apply to claims for, and the payment of, State unemployment compensation shall apply to claims for, and the payment of, UCCE and claims for waiting period credit. The provisions of the applicable State law which shall apply include, but are not limited to:

- (1) Claim filing and reporting;
- (2) Information to individuals, as appropriate;

(3) Notices to individuals and Federal agencies, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to UCCE;

(4) Determinations and redeterminations;

(5) Ability to work, availability for work, and search for work; and

(6) Disqualifications.

(b) *IBPP. The Interstate Benefit*

Payment Plan shall apply, where appropriate, to individuals filing claims for UCCE.

(c) *Wage combining.* The State's provisions complying with the *Interstate Arrangement for Combining Employment and Wages* (Part 616 of this chapter) shall apply, where appropriate, to individuals filing claims for UCCE.

(d) *Procedural requirements.* The provisions of the applicable State law which apply hereunder to claims for and the payment of UCCE shall be applied consistently with the requirements of Title III of the Social Security Act and the Federal Unemployment Tax Act which are pertinent in the case of State unemployment compensation, including but not limited to those standards and requirements specifically referred to in the provisions of this part, except as provided in paragraph (f) of § 609.6.

§ 609.10 Restrictions on entitlement.

(a) *Disqualification.* If the week of unemployment for which an individual claims UCCE is a week to which a disqualification for State unemployment compensation applies under the applicable State law, or would apply but for the fact that the individual has no right to such compensation, the individual shall not be entitled to a payment of UCCE for that week.

(b) *Allocation of terminal annual leave payments.* Lump-sum terminal annual leave payments shall not be allocated by a Federal agency and shall be allocated by a State agency in the same manner as similar payments to individuals employed by private employers are allocated under the applicable State law. In a State in which a private employer has an option as to the period to which such payments shall be allocated, such payments shall be allocated to the date of separation from employment.

§ 609.11 Overpayments; penalties for fraud.

(a) *False statements and representations.* Section 8507(a) of the Act provides that if a State agency, the Department, or a court of competent jurisdiction finds that an individual—

(1) Knowingly has made, or caused to be made by another, a false statement or

representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) As a result of that action has received an amount as UCCE to which the individual was not entitled; the individual shall repay the amount to the State agency or the Department. Instead of requiring repayments, the State agency or the Department may recover the amount by deductions from UCCE payable to the individual during the 2-year period after the date of the finding. A finding by a State agency or the Department may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under § 609.7.

(b) *Prosecution for fraud.* Section 1919 of title 18, United States Code, provides that whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment authorized to be paid under chapter 85 of title 5, United States Code, or under an agreement thereunder, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(c) *Absence of fraud.* If a State agency or court of competent jurisdiction finds that an individual has received a payment of UCCE to which the individual was not entitled under the Act and this part, which was not due to a false statement or representation as provided in paragraph (a) or (b) of this section, the individual shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled, and the State agency shall take all reasonable measures authorized under any State law or Federal law to recover for the account of the United States the total sum of the payment to which the individual was not entitled.

(d) *Recovery by offset.* (1) The State agency shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by deductions from any UCCE payable to the individual under the Act and this Part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(2) A State agency shall also recover, insofar as is possible, the amount of any overpayment of UCCE made to the individual by another State, by

deductions from any UCCE payable by the State agency to the individual under the Act and this part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(3) Recoupment of fraudulent overpayments referred to in paragraph (a) of this section shall be limited to the 2-year period stated in that paragraph. Recoupment of fraudulent overpayments referred to in paragraph (b) of this section, and nonfraudulent overpayments referred to in paragraph (c) of this section shall be subject to any time limitation on recoupment provided for in the State law that applies to the case.

(e) *Debts due the United States.* UCCE payable to an individual shall be applied by the State agency for the recovery by offset of any debt due to the United States from the individual, but shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person except pursuant to a court order for child support or alimony in accordance with the law of the State and Section 459 of the Social Security Act, 42 U.S.C. 659.

(f) *Application of State law.* (1) Except as indicated in paragraph (a) of this section, any provision of State law that may be applied for the recovery of overpayments or prosecution for fraud, and any provision of State law authorizing waiver of recovery of overpayments of unemployment compensation, shall be applicable to UCCE.

(2) In the case of any finding of false statement or representation under the Act and paragraph (a) of this section, or prosecution for fraud under 18 U.S.C. 1919 or pursuant to paragraph (f)(1) of this section, the individual shall be disqualified or penalized in accordance with the provisions of the applicable State law relating to fraud in connection with a claim for State unemployment compensation.

(g) *Final decision.* Recovery of any overpayment of UCCE shall not be enforced by the State agency until the determination or redetermination establishing the overpayment has become final, or if appeal is taken from the determination or redetermination, until the decision after opportunity for a fair hearing has become final.

(h) *Procedural requirements.* (1) The provisions of paragraphs (c), (d), and (g)

of § 609.6 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 609.7 shall apply to determinations and redeterminations made pursuant to this section.

(i) *Fraud detection and prevention.* Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayments of UCCE shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual*, Part V, section 7510 *et seq.*).

(j) *Recovered overpayments.* An amount repaid or recouped under this section shall be—

(1) Deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) Returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Department.

§ 609.12 Inviolable rights to UCCE.

Except as specifically provided in this part, the rights of individuals to UCCE shall be protected in the same manner and to the same extent as the rights of persons to State unemployment compensation are protected under the applicable State law. Such measures shall include protection of applicants for UCCE from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to UCCE, except as provided in § 609.11. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for, and receiving any right to UCCE.

§ 609.13 Recordkeeping; disclosure of information.

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

(b) *Disclosure of Information.* Information in records maintained by a State agency in administering the UCCE Program shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with

respect to State unemployment compensation and the entitlement of individuals thereto may be disclosed under the applicable State law. This provision on the confidentiality of information maintained in the administration of the UCCE Program shall not apply, however, to the Department or for the purposes of §§ 609.11 or 609.13, or in the case of information, reports and studies required pursuant to §§ 609.17 or 609.25, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or regulations of the Department promulgated thereunder.

§ 609.14 Payments to States.

(a) *State entitlement.* Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages, an amount bearing the same ratio to the total amount of compensation paid to such individual as the amount of the individual's Federal wages in the individual's base period bears to the total amount of the individual's base period wages.

(b) *Payment.* Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Department, the sum that the Department estimates the State is entitled to receive under the Act and this Part for each calendar month. The sum shall be reduced or increased by the amount which the Department finds that its estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Department and the State agency.

(c) *Certification by the Department.* The Department, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of the Act and this part.

(d) *Use of money.* Money paid a State under the Act and this Part may be used solely for the purposes for which it is paid. Money so paid which is not used solely for these purposes shall be returned, at the time specified by the Agreement, to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payments to states

under the Act and this part may be made.

§ 609.15 Public access to Agreements.

The State agency of a State will make available to any individual or organization a true copy of the Agreement with the State for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

§ 609.16 Administration in absence of an Agreement.

(a) *Administering Program.* The Department shall administer the UCFE Program through personnel of the Department or through other arrangements under procedures prescribed by the Department, in the case of any State which does not have an Agreement with the Secretary as provided for in 5 U.S.C. 8502. The procedures prescribed by the Department under this section shall be consistent with the Act and this part.

(b) *Applicable State law.* On the filing by an individual of a claim for UCFE in accordance with arrangements under this section, UCFE shall be paid to the individual, if eligible, in the same amount, on the same terms, and subject to the same conditions as would be paid to the individual under the applicable State law if the individual's Federal civilian service and Federal wages had been included as employment and wages under the State law. Any such claim shall include the individual's Federal civilian service and Federal wages, combined with any service and wages covered by State law. However, if the individual, without regard to his or her Federal civilian service and Federal wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of UCFE under this section may be made only on the basis of the individual's Federal civilian service and Federal wages.

(c) *Fair hearing.* An individual whose claim for UCFE is denied under this section is entitled to a fair hearing under rules of procedure prescribed by the Department. A final determination by the Department with respect to entitlement to UCFE under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

§ 609.17 Information, reports, and studies.

State agencies shall furnish to the Department such information and

reports and conduct such studies as the Department determines are necessary or appropriate for carrying out the purposes of the UCFE Program.

Subpart C—Responsibilities of Federal Agencies

§ 609.20 Information to Federal civilian employees.

Each Federal agency shall:

(a) Furnish information to its employees as to their rights and responsibilities under the UCFE Program and 18 U.S.C. 1919; and

(b) Furnish a completed copy of a form approved by the Department, "Notice to Federal Employee About Unemployment Compensation," in accordance with instructions thereon, to each employee at the time of separation from Federal civilian service, when transferred from one payroll office to another, or when the office responsible for distribution of the form is advised that an individual is in nonpay status for seven consecutive days or more.

§ 609.21 Findings of Federal agency.

(a) *Answering request.* Within four workdays after receipt from a State agency of a request for Federal findings on a form furnished by the State agency, and prescribed by the Department, a Federal agency shall make such Federal findings, complete all copies of the form, and transmit the completed copies to the State agency. If documents necessary for completion of the form have been assigned to an agency records center or the Federal Records Center in St. Louis, the Federal agency shall obtain the necessary information from the records center. Any records center shall give priority to such a request.

(b) *Failure to meet time limit.* If a completed form containing the Federal agency's findings cannot be returned within four workdays of receipt, the Federal agency immediately shall inform the State agency, and shall include an estimated date by which the completed form will be returned.

(c) *Administrative control.* Each Federal agency shall maintain a control of all requests for Federal findings received by it, and the Federal agency's response to each request. The records shall be maintained so as to enable the Federal agency to ascertain at any time the number of such forms that have not been returned to State agencies, and the dates of the Federal agency's receipt of such unreturned forms.

§ 609.22 Correcting Federal findings.

If a Federal agency ascertains at any time within one year after it has returned a completed form reporting its

findings, that any of its findings were erroneous, it shall promptly correct its error and forward its corrected findings to the State agency.

§ 609.23 Furnishing additional information.

On receipt of a request for additional information from a State agency, a Federal agency shall consider the information it supplied initially in connection with such request and shall review its findings. The Federal agency promptly shall forward to the State agency such additional findings as will respond to the request. The Federal agency shall, if possible, respond within four workdays after the receipt of a request under this section.

§ 609.24 Reconsideration of Federal findings.

On receipt of a request for reconsideration of Federal findings from a State agency, the Federal agency shall consider the initial information supplied in connection with such request and shall review its findings. The Federal agency shall correct any errors or omissions in its findings and shall affirm, modify, or reverse any or all of its findings in writing. The Federal agency promptly shall forward its reconsidered findings to the requesting authority. The Federal agency shall, if possible, respond within four workdays after the receipt of a request under this section.

§ 609.25 Furnishing other information.

(a) *Additional Information.* In addition to the information required by §§ 609.21, 609.22, 609.23, and 609.24, a Federal agency shall furnish to a State agency or the Department, within the time requested, any information which it is not otherwise prohibited from releasing by law, which the Department determines is necessary for the administration of the UCFE Program.

(b) *Reports.* Federal agencies shall furnish to the Department or State agencies such reports containing such information as the Department determines are necessary or appropriate for carrying out the purposes of the UCFE Program.

§ 609.26 Liaison with Department.

To facilitate the Department's administration of the UCFE Program, each Federal agency shall designate one or more of its officials to be the liaison with the Department. Each Federal agency will inform the Department of its designation(s) and of any change in a designation.

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