

**State of Connecticut
Regulation of
Department of Labor
Concerning
Unemployment Insurance Modernization**

Section 1. Section 31-235-1 of the Regulations of Connecticut State Agencies is amended as follows:

Sec. 31-235-1. Definitions

For purposes of sections 31-235-1 through [31-235-26] 31-235-23 and sections 31-236-1 to 31-236-57 inclusive of these regulations, the following definitions apply:

(a) “Administrator” means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or [his] the Labor Commissioner’s designated representative.

(b) “Base period” means [the first four of the five most recently completed calendar quarters prior to an individual’s benefit year, provided such quarters were not previously used to establish a prior valid benefit year, except that for any individual who is eligible to receive or is receiving or had received workers’ compensation, or who is or had been properly absent from work under the terms of his employer’s sick leave or disability leave policy, the base period shall be the first four of the five most recently worked quarters prior to such benefit year, provided, such quarters were not previously used to establish a prior valid benefit year and provided further, the last most recently worked calendar quarter is not more than twelve calendar quarters prior to the date such individual makes his initiating claim] an individual’s regular, alternate, or special base period as defined in section 31-230 of the Connecticut General Statutes.

(c) “Benefits” means unemployment compensation payable to an individual with respect to [his] such individual’s unemployment under Chapter 567 of the Connecticut General Statutes.

(d) “Benefit year” means the period commencing with the beginning of the week with respect to which an individual has filed a valid initiating claim and continuing through the Saturday of the fifty-first week following the week in which it commenced, provided no benefit year shall end until after the end of the third complete calendar quarter, plus the remainder of any uncompleted calendar week which began in such quarter, following the calendar quarter in which it commenced.

(e) “Full-time work” means employment for the number of hours which prevails for the industry or employment sector in which the work is performed.

(f) “Job attached” means (1) the claimant has a date of rehire or recall with the claimant’s most recent employer, (2) the work is covered employment under the Connecticut Unemployment Compensation Act, and (3) the work to be offered is full-time employment.

[f)](g) “Labor dispute” means any controversy concerning terms or conditions of employment, or concerning association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of respective interests of employer and employee.

[g)](h) “Major portion of the week” means three or more of those days of the week during which the work for which an individual is suited is customarily performed to a significant extent.

[h)](i) “Prevailing wages, hours or conditions” means those wages paid, or hours or conditions which exist for the largest number of workers engaged in similar work in the area.

[(i)](j) “Public employment bureau” means the Connecticut State Job Service, or where an individual is filing for benefits on an interstate basis, the public employment bureau in the appropriate jurisdiction.

(k) “Union attached” means the claimant is (1) a member in good standing with the individual’s trade union, (2) is on the union’s out-of-work list, and (3) the union operates an exclusive hiring hall.

[(j)](l) “Week” means a calendar week commencing at midnight on Sunday.

[(k)](m) “Wilful” means intentional or deliberate or with reckless indifference for the probable consequences of one’s actions.

Sec. 2. Sections 31-235-22 to 31-235-23, inclusive, of the Regulations of Connecticut State Agencies are amended as follows:

Sec. 31-235-22. Efforts—general

(a) The Administrator shall require that for each week for which a claim for benefits is made, an individual [must] shall make reasonable efforts to obtain work. The purpose of the work search requirement is to assist a claimant in obtaining suitable reemployment as expeditiously as possible by bringing the availability of the claimant’s skills and aptitudes to the attention of employers.

(b) The Administrator shall deny benefits to an individual on the basis of the individual’s failure to make reasonable efforts to obtain work only if the Administrator has determined the individual to be available for suitable work and the individual’s efforts to obtain work in a given week were inadequate in terms of quantity, type of work sought or method of work search utilized.

[(c)] The Administrator shall not require any individual who is sixty-two years of age or older and who is involuntarily retired under a compulsory retirement policy or contract provision to make reasonable efforts to obtain work.]

[(d)](c) The Administrator shall not deny benefits on the basis of a failure to make reasonable efforts, unless the Administrator has first advised the individual of the requirements of section 31-235 of the Connecticut General Statutes and given the individual an opportunity to comply.

(d) The Administrator shall determine the minimum number of work search efforts required per week based upon factors that include but are not limited to, an individual’s length of unemployment, an individual’s work search results, local labor markets, and economic conditions.

Sec. 31-235-23. Efforts—[quantity and method] Method of work search; exemptions.

[The Administrator shall find that an individual’s efforts to obtain work are inadequate in any week if the individual has not brought his skills and aptitudes to the attention of a sufficient number of employers to effectively enhance his prospects for securing suitable work at the earliest possible date.]

(a) The Administrator shall find that a claimant is making adequate efforts to obtain work in any week in which the claimant reports the minimum number of work search efforts prescribed by the Administrator during the week the claimant filed for benefits. The claimant shall certify to the Administrator the required number of work search efforts in a manner prescribed by the Administrator. Failure to provide the required number of valid work search contacts for a week in which a claim is filed or failure to answer fully all questions related to a work search contact provided by the claimant may result in the denial of benefits.

(b) A valid work search activity shall include, but not be limited, to the following:

(1) applying to an employer for work in a manner prescribed by the Administrator for which the claimant is reasonably suited, based upon prior work experience, skills, knowledge and ability and

which will ensure the employer will be able to contact the claimant regarding possible employment;

(2) attending a work shop at an American Job Center;

(3) attending a job fair;

(4) participating in reemployment service activities at an American Job Center;

(5) creating a reemployment plan;

(6) attending a job interview;

(7) creating a resume and uploading the resume to the Connecticut Department of Labor’s State Job Bank; or

(8) creating a personal user profile on a professional networking site.

(c) Work search efforts may be conducted on any day of the week in which a claimant files.

(d) Multi-day work search activities may be considered multiple work search activities during a particular week.

(e) A valid work search does not include:

(1) seeking self-employment;

(2) working as an independent contractor; or

(3) reporting part-time work.

(f) The claimant shall retain all work search effort information necessary for verification by the Administrator for a minimum of three (3) years. The Administrator may request information that includes, but is not limited to:

(1) date of the work search activity;

(2) information on the employer, including but not limited to, the name of the employer, contact person at the employer, employer’s web address, and telephone number of the employer;

(3) position applied for by claimant, if specific position advertised;

(4) result of the work search contact;

(5) copy of confirmation of receipt of application or resume by the employer for an online application, if available;

(6) copy of job advertisement, when applicable;

(7) copy of workshop flyer; and

(8) copy of job fair flyer.

(g) The Administrator may exempt a claimant from the requirement to complete work search efforts and retain work search documentation when the claimant is:

(1) job attached and is scheduled to return to work on a definite date as prescribed by the Administrator;

(2) union attached;

(3) engaged in state-approved training;

(4) participating in an approved Shared Work Program; or

(5) serving on Jury Duty.

Sec. 3. Section 31-235-27 of the Regulations of Connecticut State Agencies is amended as follows:

Sec. 31-235-27. Participation in profiling and the Reemployment Services and Eligibility Assessment Program (RESEA)

(a) For purposes of this section, the following definitions apply:

(1) “Administrator” means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or [his] the Labor Commissioner’s designated representative.

(2) “Due diligence” means the actions a reasonable and prudent person would take under similar

circumstances.

(3) “Good faith error” means a reason given by an individual [identified through the profiling system] who is selected through the profiling model or is associated with a targeted population for failure to participate [in a reemployment service] in the program, which reason is attributable to an honest mistake that does not rise to the level of gross negligence.

(4) “Participation” in a Reemployment Service” means attendance and a good faith effort to participate in and complete a reemployment service.

(5) “Profiling System” means a system designed by the Administrator to identify unemployment compensation benefit recipients who [are likely to exhaust regular benefits and] need reemployment services to make a successful transition to new employment.

(6) “Reemployment Service” means a service to which an individual [identified through the profiling system] participating in the RESEA program has been referred, which is designed to: (a) [orientate an individual to the profiling system and assess his need for subsequent services] assess the individual’s need for services; [and/or] and (b) provide the individual with skills or information to assist [him] such individual to return to suitable employment.

(7) “Reemployment Services and Eligibility Assessment Program (RESEA)” means a program that is funded by the United States Department of Labor to assist individuals receiving unemployment benefits to return to suitable work more quickly.

(b) The Administrator’s responsibilities in the operation of a [profiling system] RESEA program shall include, but not be limited to, the following:

(1) Identification of individuals through the [profiling system] profiling model or within target populations [who are likely to exhaust unemployment benefits];

(2) Orientation of individuals regarding available [profiling system] RESEA program reemployment services and assessment of the need for such services;

(3) Determination of what, if any, [profiling system] RESEA program reemployment services are needed to assist the individual to make a successful transition to new employment;

(4) Referral of individuals, when appropriate, to [profiling system] the RESEA program reemployment services deemed necessary by the Administrator;

(5) Monitoring of an individual’s participation in referred reemployment services, where necessary;

(6) Scheduling and conducting a [hearing] fact-finding process to adjudicate eligibility for unemployment benefits pursuant to Section 31-241 of the General Statutes, whenever the Administrator identifies an issue of compliance with respect to an individual’s participation in a reemployment service which requires adjudication; and

(7) Making a determination of eligibility with respect to any issue adjudicated pursuant to subdivision (6) of this subsection.

(c) As a condition of eligibility for unemployment benefits, an individual shall participate in any appropriate[, profiling system] RESEA program reemployment service to which [he] the individual has been referred [unless he has completed similar services or he] unless the individual can demonstrate that justifiable cause existed for [his] the individual’s nonparticipation. Failure to comply with the RESEA program requirements will result in a delay or loss of a claimant’s unemployment benefits for a particular week.

(d) In considering whether justifiable cause has been shown for the nonparticipation in a [profiling system] RESEA program reemployment service, the Administrator shall compare the individual’s actions with the standard of what a prudent and reasonable person would do under similar circumstances and consider all relevant factors, including but not limited to:

(1) “Good faith error” by the individual provided there is no prior history of nonparticipation due to such error. In determining whether good faith error existed, the Administrator shall consider an

individual's level of familiarity with [profiling system] RESEA program procedures and requirements and whether the individual's actions otherwise demonstrate an intent to comply with such procedures and requirements;

- (2) Any physical or mental impairment of the individual which may have prevented participation;
- (3) Administrative error by the Employment Security Division or the failure of the Division to discharge its responsibilities;
- (4) Factors outside the control of the individual which prevented participation;
- (5) Participation in a training program approved by the Administrator pursuant to Section 31-236b of the general statutes;
- (6) A scheduled interview or appointment with an employer relating to the individual's efforts to obtain suitable employment;
- (7) Employment, the hours of which conflict with participation;
- (8) Whether the individual acted with due diligence after the reason for nonparticipation no longer existed[;].
- [(9) Whether the individual is currently participating in, or will in the immediate future, participate in similar services.]

(e) Any profiling or RESEA system reemployment service which requires attendance for two days or less in any given week shall not be considered training with approval of the Administrator pursuant to Section 31-236b of the Connecticut General Statutes.

Sec. 4. Section 31-222-9 of the Regulations of Connecticut State Agencies is amended as follows:

Sec. 31-222-9. Unemployment notices and employee information packet, low earnings reports and lack of work verification form

All employers, whether or not subject to the act, shall submit the following reports, forms, notices and information packets, in such medium as is authorized by the administrator, at the times and under the conditions specified:

(1) **An unemployment notice and employee information packet.** This notice shall be prepared on forms made up or approved by the administrator and shall contain the information required by such forms. The notice shall be attached to an employee information packet, which provides information regarding how to file for unemployment benefits and available reemployment assistance. The administrator shall provide such employee information packets, upon request, to the employer. The unemployment notice shall be completed by the employer and issued to the employee, along with the employee information packet, immediately upon layoff or separation from employment, whatever the cause of such layoff or separation, including a voluntary leaving. This notice shall not be used or required for any purpose other than the filing of a claim for unemployment compensation benefits by the employee. When the administrator determines that, based on the information contained on this notice, or information provided by the individual or the employer, that an issue exists which may affect the individual's eligibility, including but not limited to the separation being due to reasons other than a lack of work layoff, the administrator shall promptly [schedule a predetermination hearing pursuant to the provisions of section 31-244-3a of the Regulations of Connecticut State Agencies] provide notice to interested parties of a fact-finding process on the issue of the individual's eligibility for unemployment benefits in a manner prescribed by the Administrator.

(2) **Employee low earnings report.**

[(A)] The administrator may require an employer to complete this report with respect to an individual filing a claim for partial unemployment benefits pursuant to section 31-229 of the Connecticut General Statutes. The employer shall complete and submit the report in the manner and within the time period prescribed by the administrator. Information required on the report shall

include, but not be limited to: the earnings for such individual for the calendar week in question, the cause of the reduced earnings, the name and the Connecticut registration number of the employer and the signature (individual or facsimile) of the authority supplying the information.

[(B) Nothing in this section shall preclude the administrator, upon his own discretion, from entering into an agreement with an employer which would allow an employer to submit to the administrator, in a manner prescribed by the administrator, information concerning an individual's partial earnings for the calendar week or weeks in question and specifying the cause for the reduced earnings. The administrator shall utilize this procedure to enable the employer to establish a claim or to file continued claims for partial benefits on behalf of the individual.]

(3) **[Lack of work separation] Separation verification form.**

(A) The administrator shall promptly transmit this form to the employer [in any case where the administrator determines it is necessary] to verify that a [lack of work] separation has occurred, and to request separation information as specified on the form. [including any case where the individual alleging lack of work acknowledges that he was not given an unemployment notice and information packet by his employer upon separation. Further, the administrator shall promptly transmit this form to the employer in all cases where the claimant has indicated that he was laid off for lack of work from employment which commenced after the claimant's base period.]

(B) The administrator shall transmit the form to the employer's address that appears on the [unemployment notice (Form UC-61)] Administrator's Notice of Separation form. Where no [Unemployment] Notice of Separation is provided to the administrator, the administrator shall transmit the form to the most recent address of record provided by the employer to the administrator's Employer Status unit[.] or, if the employer participates electronically in SIDES, as defined in section 31-244-1a(f) of the Regulations of Connecticut State Agencies, to the employer's most recent electronic address.

(C) The form shall advise the employer of the following:

(i) [that the individual claiming benefits stated his separation was due to a reason which constituted a lack of work layoff] the reason for the separation, as specified by the claimant;

[(ii) that no action is required by the employer if the employer agrees with the individual's statement];

[(iii)] (ii) that the employer [must] is required to respond within the time frame and as prescribed on the form. [,within seven calendar days of the date the form was transmitted if the employer disagrees with the individual's characterization of the separation;] and

[(iv) the manner in which the employer must respond if it disagrees with the individual's characterization of the separation; and]

[(v)] (iii) the consequences for the employer's failure to timely respond, as described in subdivisions (D) and (E) [and (F)] of this subsection.

(D) If the employer disagrees with the individual's characterization of the separation as a lack of work layoff, it shall provide the administrator with the information requested on the form by responding to the administrator in the manner prescribed on the form.]

(E) (D) [The employer's response shall be received by the administrator within the time limit prescribed on the form.] If the employer fails to respond to the administrator with the required information [within seven (7) calendar days] within the time frame and in the manner prescribed by the Administrator, benefits may be paid based upon the information provided by the individual.

(F) (E) If the employer fails to respond to the administrator with the required information [within seven (7) calendar days] within the time frame and in the manner prescribed by the Administrator and prior to first payment of benefits, the administrator shall [treat the separation as a lack of work and] find that the employer has waived its right to a [first level predetermination hearing] fact-finding and has failed to participate [in such hearing] for the purposes of section 31-241 of the Connecticut

General Statutes.

[(G)] (F) If the employer responds to the administrator in the prescribed manner within [seven calendar days] the time frame and in the manner prescribed by the Administrator and advises the administrator that the separation was for a reason which does not constitute a lack of work layoff, the administrator shall promptly [schedule a predetermination hearing] engage in a fact-finding process pursuant to the provisions of section 31-244-3a of the Regulations of Connecticut State Agencies.

[(H)] (G) Nothing in this section shall preclude the administrator, based on [his] the Administrator's own judgment, from [scheduling a predetermination hearing] initiating a fact-finding process with respect to any claim, based upon the specific circumstances of the claim.

(4) Repealed.

[(5) **Vacation shutdown claim.** The administrator may require an employer to complete and submit this form, in a manner prescribed by the administrator, in order to establish a claim on behalf of an individual unemployed for a period of six weeks or less as a result of an employer's temporary shutdown or mass layoff.]

Sec. 5. Section 31-222-13 of the Regulations of Connecticut State Agencies is amended as follows:

Sec. 31-222-13. Benefit claim procedure

(a) **Definitions.** For purposes of this section, the following definitions shall apply:

(1) "Good faith error" means the excusable failure of an individual to file a claim, either initial or continuing, in the manner prescribed by the administrator, due to the individual's own negligence, provided there is (a) no prior history of late filing due to such error, (b) the claim is not excessively late, and (c) there is no prejudice to any adverse party.

(2) "Invalidation" means (a) the withdrawal of an otherwise valid initiating claim within twenty-one days from the date on which the monetary determination is issued, (b) the exercising by the administrator of [his] the Administrator's discretion to reopen a claim under section 31-243 of the Connecticut General Statutes, or (c) the withdrawal of a valid initiating claim in favor of an initiating claim with a later effective date at any time during the six month period following the issuance of the monetary determination.

(3) "Valid initiating claim" means a claim filed by an unemployed or partially unemployed individual who meets the requirements of subdivisions (1) and (3) of subsection (a) of section 31-235 of the Connecticut General Statutes, provided that, with respect to any week of unemployment or partial unemployment, the individual is not found to be entitled to unemployment compensation under any other state's law or compensation for temporary disability under any workers' compensation law for the same period.

(b) [**Where made.**] All claims for benefits[, unless otherwise directed or authorized,] shall be made [by telephone to designated Unemployment Insurance Call Centers. The telephone numbers for the Call Centers and instructions for filing an initial claim for benefits shall be contained in the employee information packet, which will be given to the individual upon separation. Individuals making inquiry regarding claim filing shall be directed to the appropriate Call Center telephone number] in a manner prescribed by the Administrator.

(c) [**When made**] **Initiating and Continuing Claims.**

(1) **Initiating claim.** A week of unemployment shall be a calendar week commencing at midnight on Sunday. An initiating claim shall be filed during the week of unemployment with respect to which it is filed and shall be effective as of the commencement of the week within which it is filed, except where, pursuant to the provisions of section 31-229 of the Connecticut General Statutes, an individual's partial earnings in any week exceed [his] such individual's weekly benefit entitlement

with respect to such week, the claim shall be effective as of the commencement of the following week. An initiating claim for partial unemployment shall be filed within four weeks from the end of the calendar week in which the individual's hours were reduced to less than full time and shall be effective as of the commencement of the week of the individual's partial unemployment.

(2) **Continuing claims.** A continuing claim for benefits shall be filed in such manner as prescribed in subsection (d) of this section, and the claimant shall attest to work search efforts. A continuing claim for partial benefits shall be filed in the same manner as a claim for total unemployment, except that it shall include the statement of earnings provided for under section 31-222-9 of the Regulations of Connecticut State Agencies.

[(3) Vacation shutdown claim. An initiating claim and up to six weeks of continuing claims may be filed where an individual has been laid off due to lack of work for six weeks or less, including during the employer's designated vacation shutdown period, by using the form prescribed under subsection (4) of section 31-222-9 of the Regulations of Connecticut State Agencies, provided the individual has a definite date to return to work within the six week period.]

[(4)](3) **Failure to file claim within time limit.** Failure to file a claim for benefits, either initial or continuing, within the time limits set forth in this section and in the manner prescribed in subsection (d) of this section, may be found to be for good cause if the administrator determines that a person exercising reasonable prudence in the same circumstances would have been prevented from timely filing. Reasons constituting good cause for failure to timely file a claim include, but are not limited to: (A) failure of the employment security division to discharge its responsibilities, (B) failure of the employer to comply with verification or other requirements relating to unemployment, including failure to issue the unemployment notice and employee information packet, (C) coercion or intimidation which prevented the prompt filing of a claim, or (D) good faith error, provided the individual acted with due diligence in the filing of the claim once [he] the individual was appropriately notified of [his] such individual's rights to benefits or once the reason which provided good cause for [his] the individual's failure to file ceased to exist.

[(5)](4) **Invalidation of initiating claim.** Upon the individual's request, subject to the provisions of sections 31-241 and 31-243 of the Connecticut General [Statues] Statutes, the administrator may invalidate a valid initiating claim provided the individual has first repaid in full any amount of benefits which the individual will be overpaid as a result of the invalidation unless the overpaid benefits can immediately be recouped in full from subsequent payable benefits. Overpayments resulting from an individual's request for invalidation of a valid initiating claim shall not be deemed to have occurred through error and shall not, therefore, be subject to the provisions of section 31-273(a) of the Connecticut General Statutes.

[(d) How made.]

[(1) Initiating claim – by telephone

The individual shall call one of the designated Call Center telephone numbers obtained from the employee information packet during days and hours designated by the administrator and, once connected to the Interactive Voice Response (IVR) System, will be prompted to enter his social security number and establish a personal identification number (PIN). The individual's Social Security Number and PIN shall be the individual's legal identifiers and must be established. The IVR will then present the individual with a series of questions. Upon completion of the IVR questions, or at a time designated by the IVR system, the individual shall be transferred to an agency representative located in the Call Center, who will complete the claims taking process. The claim is considered filed when a Call Center representative informs the individual that the claim is completed and has been accepted. If the individual fails to complete the claim within seven days of its initiation, the claim must be reinstated and the effective date of the claim will change to the Sunday of the week in which the claim is completed.]

[(2) Initiating claim – in person

When so directed or authorized by the administrator, an initial claim may be filed in person at a Department of Labor local office most easily accessible to the individual's residence. The administrator may direct or authorize an individual to file in person when the administrator determines that it would be administratively more efficient, considering such factors as language barriers, lack of access to a telephone, the complexity of the claim, or the individual's mental or physical disability or inability to complete a claim using the telephone system.]

[(3) Initiating claim - shutdown

When an individual is laid off due to lack of work for six weeks or less, including during the employer's vacation shutdown period, and has been given a definite return-to-work date within the six-week period, the employer shall provide the individual with a vacation shutdown claim form (form UC-62V). The claim shall be filed by transmitting the form UC-62V to the address designated by the administrator, unless otherwise instructed. When a new claim is filed using the vacation shutdown claim form (form UC-62V), the individual shall not be required to file weekly continuing claims.]

[(4) Continuing claim – by telephone

All continuing claims for benefits, unless otherwise directed, shall be made by telephone on a weekly basis to designated Unemployment Insurance Call Center telephone numbers. The individual shall telephone the designated phone number on a weekly basis on such days and during such hours as designated by the administrator to file for the week. The individual shall access the Interactive Voice Response (IVR) System by entering his social security number and personal identification number (PIN). The administrator shall treat the PIN in the same manner as the individual's signature. By entering the social security number and PIN, the individual certifies that he is answering the questions truthfully and understands that giving false information or answering questions for anyone other than himself constitutes fraud and is subject to penalties prescribed by law. The individual shall be guided through a series of questions regarding eligibility for the seven-day calendar week with respect to which his claim is being filed.]

[(5) Continuing partial claim – by telephone

When filing partial continuing claims, the individual shall enter the name and address of the employer, hours and minutes worked and wages earned for the week claimed. Wages earned for any work performed must be reported as part of the filing of the claim for the week in which the wages were earned, not with respect to the week in which the wages were paid, if such week is not the claim week.]

(5) The administrator may direct or authorize an individual to file in person when the administrator determines that it would be administratively more efficient, considering such factors as language barriers, lack of access to a telephone, the complexity of the claim, or the individual's mental or physical disability or inability to complete a claim using the claim filing system.

[(6)](d) **Return to work**

Upon returning to employment, the individual shall [contact the call center to] provide the following information to the Administrator in a manner prescribed by the Administrator: the date on which the individual returned to work, the name and address of the individual's new employer and whether or not the work is self-employment.

[(7)](e) **Shared work claims**

Any initial or continuing claim for shared work benefits, pursuant to sections 31-250-8 through 31-250-12, inclusive, of the Regulations of Connecticut State Agencies, may be filed by an employer on behalf of its employees in such manner [and medium] as directed by the administrator.

Sec. 6. Section 31-273-2 of the Regulations of Connecticut State Agencies is amended as follows:

Sec. 31-273-2. Non-fraud overpayments: Notice, [hearing] fact-finding and determination

(a) Where the Administrator determines that an individual has through error received any sum as benefits while any condition for the receipt of benefits imposed by Chapter 567 of the General Statutes was not fulfilled with respect to the individual's claim, or that an individual has received a greater amount of benefits than was due such individual, such individual shall be charged with an overpayment of a sum equal to the amount so overpaid. The Administrator shall take such action unless the Administrator determines that repayment or recoupment would defeat the purpose of the benefits or be against equity and good conscience and should be waived pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies. The Administrator shall charge the individual with an overpayment only so long as such error has been discovered and brought to the individual's attention within one year of the date of receipt of such benefits, except as provided in subsection (i) of this section.

(b) Where the Administrator identifies a question of eligibility pursuant to Chapter 567 of the Connecticut General Statutes with respect to one or more weeks for which an individual was previously paid any sum of benefits, the Administrator shall give adequate notice to the individual that a [hearing] fact-finding process will be held by the Administrator for the purpose of determining whether the individual was eligible for benefits for such week or weeks. [The notice] Notification of the fact-finding process to the individual shall include:

- [(1)] the time and date of such hearing;
- (2) notification as to the telephone hearing process if scheduled to be conducted by telephone;
- [(3)](1) information necessary for the claimant to submit evidence or [testimony for use at the hearing, if applicable] statements, in the manner prescribed by the Administrator;
- [(4)](2) notification that such [hearing] fact-finding will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies;
- [(6)](3) notice that a determination of ineligibility or non-entitlement for any week or weeks or part of any week or weeks will result in the charging of an overpayment to the individual, and that if the individual's receipt of such sum of benefits was not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another, the individual shall also have the following issues considered [at the same hearing] during the same fact-finding:
 - (A) the exact amount of benefits overpaid to the individual;
 - (B) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to section 31-273-4 of the Regulations of Connecticut State Agencies; and
 - (C) if no waiver is made pursuant to subparagraph (B) of this subdivision, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits;
- [(7)](4) notice to the individual that if the individual fails to [appear at such hearing] participate in such fact-finding, the Administrator will proceed to adjudicate all issues identified in this section and make a determination with respect to those issues on the basis of the record available to the Administrator, by offset from the individual's weekly unemployment benefits, pursuant to subsection (c) of this section; and
- [(8)](5) notice that the Administrator's determination or any portion thereof may be appealed to the Employment Security Appeals Division.

The [hearing] fact-finding process held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

- (6) identification of the question or questions of eligibility to be addressed [at such hearing] during

such fact-finding; and

(7) notification that the examiner designated by the Administrator may prescribe a hearing by telephone or in person at the examiner's discretion, or upon request by a claimant, which request may not be unreasonably denied by the examiner.

(c) Where the individual is determined to be ineligible for benefits as the result of [a hearing] fact-finding conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies or upon review of the available record, the Administrator shall issue a determination which contains the following information:

- (1) the reason the individual was ineligible for or not entitled to benefits;
- (2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;
- (3) the total amount of the overpayment;
- (4) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies;
- (5) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies; and
- (6) the individual's statutory appeal rights.

However where, as the result of a [hearing] fact-finding conducted pursuant to subsection (b) of this section, the Administrator determines that an individual has been overpaid benefits but that additional evidence is necessary to make a proper determination as to whether such overpayment should be waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies, and that such evidence could be obtained by the individual within a reasonable period of time, the Administrator may issue a determination with respect to subdivisions (1), (2) and (3) of this subsection immediately, and issue a subsequent determination with respect to subdivisions (4) and (5) of this subsection after the individual has been afforded a reasonable opportunity to present any additional evidence to support the individual's request for waiver of the overpayment. In each determination, the Administrator shall afford the individual statutory appeal rights.

(d) Where the Administrator detects that an individual has been overpaid benefits as a result of a clerical or computational error in the processing of any weekly claim for benefits, the Administrator shall notify the individual that the individual has been charged with an overpayment of such benefits, the amount of the overpayment and that the individual has a right to a [hearing] fact-finding process to be held by the Administrator to address:

- (1) whether or not the individual was overpaid benefits and the reasons therefor;
- (2) the exact amount of benefits overpaid to the individual;
- (3) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to section 31-273-4 of the Regulations of Connecticut State Agencies; and
- (4) if no waiver is made pursuant to subdivision (3) of this subsection, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits, pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies.

In addition, the Administrator shall notify the individual that if the individual does not exercise the individual's right to such [hearing] fact-finding process within fourteen days of the date such notification was mailed, or if the individual waives in writing the individual's right to such [hearing] fact-finding the Administrator will issue a determination with respect to these issues on the basis of the record available to the Administrator, which may be appealed to the Employment Security Appeals Division. Where an individual exercises such individual's right to [such hearing] a fact-finding, the Administrator shall issue a formal notice [of hearing] containing the provisions outlined

in subsection (b) of this section. The [hearing held by the Administrator] fact-finding shall be conducted in accordance with the provisions in Section 31-273-8 of the Regulations of Connecticut State Agencies. Where the Administrator concludes during the course of such [hearing] fact-finding that an overpayment does not exist, those issues relating to overpayment in subdivisions (2), (3), and (4) of this subsection will not be addressed in [the hearing] such fact-finding

(e) Where an overpayment is found to exist as a result of the [hearing] fact-finding or review of the available record referred to in subsection (d) of this section, the Administrator shall issue a determination which contains the following information:

- (1) the reason the individual was ineligible for or not entitled to benefits;
- (2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;
- (3) the total amount of the overpayment;
- (4) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies;
- (5) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies; and
- (6) the individual's statutory appeal rights.

(f) Where the Administrator determines that an individual has been overpaid benefits as the result of a decision by an Appeals Referee, the Board of Review or any state or federal court which reverses a prior decision and which has become final, or as the result of a redetermination of the individual's weekly benefit amount which has become final, the Administrator shall notify the individual that such individual has been charged with an overpayment of such benefits and that the individual has the right to a [hearing to be held] fact-finding by the Administrator which will consider the following issues only:

- (1) determination of the exact amount of benefits overpaid to the individual as a result of such decision;
- (2) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies;
- (3) if no waiver is made pursuant to subdivision (2) of this subsection, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies. In addition, the Administrator shall notify the individual that if such individual does not exercise the individual's right to such [hearing] fact-finding within fourteen days of the date such notification was mailed, or if the individual waives in writing such individual's right to such [hearing] fact-finding, the Administrator will issue a determination with respect to the issues identified in subdivisions (1), (2), and (3) of this subsection on the basis of the record available to the Administrator, which may be appealed to the Employment Security Appeals Division.

(g) Where an individual exercises such individual's right to a [hearing] fact-finding, pursuant to subsection (f) of this section, the Administrator shall issue a [formal notice of hearing] notification of fact-finding which includes:

- (1) the time and date of such hearing;
- (2) notification as to the telephone hearing process if scheduled to be conducted by telephone;
- (3) (1) information necessary for the claimant to submit evidence or [testimony for use at the hearing, if applicable] statements, in the manner prescribed by the Administrator;
- (4) (2) notification that such [hearing] fact-finding will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies;

[(5)](3) identification of the issues to be addressed [at such hearing] during such fact-finding, as described in subsection (f) of this section; [and]

[(6)](4) notice to the individual that if the individual fails to [appear at such hearing] participate in such fact-finding, the Administrator will proceed to adjudicate all issues identified in this section and make a determination with respect to those issues on the basis of the record available to the Administrator[.]; and

(5) whether the conducting of an in-person or telephonic hearing is deemed necessary by the Administrator or the Administrator's representative for purposes of the fact-finding.

The [hearing] fact-finding held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

(h) Following any [hearing] fact-finding or review of the available record by the Administrator pursuant to subsection (g) of this section, the Administrator shall issue a determination to the individual which contains the following information:

(1) the exact amount of benefits overpaid to the individual and the weeks for which the individual was overpaid;

(2) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies;

(3) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies ; and

(4) where no waiver has been made, the individual's statutory appeal rights.

(i) The requirement that error be discovered and brought to the attention of the individual within one year of the date of receipt of benefits, imposed by subsection (a) of this section shall not apply to any overpayment resulting from a decision which was appealed and did not become final within such time limitations. In such cases, overpayment resulting from such error must be discovered and brought to the attention of the individual within one year from the date upon which the controlling decision became final.

Sec. 7. Sections 31-273-4 to 31-273-5, inclusive, of the Regulations of Connecticut State Agencies are amended as follows:

Sec. 31-273-4. Waiver

(a) The Administrator shall determine that repayment or recoupment of any benefits found to be overpaid pursuant to Section 31-273-2 of the Regulations of Connecticut State Agencies would defeat the purpose of the benefits or would be against equity and good conscience and shall be waived only if the individual did not receive such benefits by reason of fraud, wilful misrepresentation or wilful nondisclosure by the individual or through the agency of another of a material fact, and one of the following conditions exists:

(1) it has been established by evidence or [testimony, presented orally or in writing] statements, that the individual's prospects for securing full-time employment are severely limited as a result of physical or mental disability, poor health or any other circumstances which would be detrimental to the individual's employability; or

(2) the benefits were overpaid to the individual as a result of retrospective application of a legislative change; or

(3) the benefits were overpaid as a direct result of gross administrative error; or

(4) the benefits were overpaid as the result of a decision by an Appeals Referee, the Employment Security Board of Review or any court of law reversing a prior decision, and adequate notice was not

given to the individual that the individual would be required to repay benefits in the event of any reversal upon appeal; or

(5) it has been established by evidence or [testimony, presented in person or in writing] statements, in the manner prescribed by the Administrator, that the individual substantially, detrimentally and irreversibly changed such individual's position in reliance upon the receipt of unemployment compensation by foregoing receipt of any public welfare benefits for which the individual would have been entitled but for the receipt of such unemployment compensation; or

(6) the individual—

(A) has been overpaid benefits in an amount equal to or greater than two times the individual's weekly benefit amount at the time the overpayment was made; and

(B) the individual's annualized family income, as determined under subsection (c) of this section, does not exceed one hundred and fifty percent of the poverty level, most recently published in the Federal Register by the United States Department of Commerce, Census Bureau, which corresponds to the size of the individual's family unit; or

(7) the individual is deceased; or

(8) the benefits were overpaid as a direct result of an employer's failure to respond timely or adequately to a request of the Administrator for information relating to the individual's claim for unemployment compensation benefits in a manner prescribed by the Administrator.

(b) For the purposes of this section, "gross administrative error" may be found only where it is clear that a reasonable examiner, adjudicator or trier of fact in the same circumstances and presented with the same facts would not have made the same determination or taken the same action, or the Employment Security Division has failed to discharge its responsibilities so as to deprive the individual of substantial due process of law. Reversal or modification of any determination upon appeal shall not, by itself, constitute grounds for finding gross administrative error.

Gross administrative error by the Administrator may be found only where the individual was not aware and reasonably would not have been aware of such error, so that reliance could not justifiably have been placed upon a determination resulting from such error.

Gross administrative error by the Employment Security Appeals Division may be found only upon a specific finding by the Employment Security Board of Review that an individual was overpaid benefits as a direct result of a decision by the Appeals Division which constitutes gross administrative error within the meaning of this subsection. The Employment Security Board of Review may determine whether an overpayment directly resulted from gross administrative error by the Appeals Division either:

(1) upon appeal of the Referee's decision by any party to the Board of Review; or

(2) upon direct certification of the question of gross administrative error to the Board of Review by the Administrator, or an Appeals Referee in any subsequent proceeding.

(c) In order to determine an individual's "annualized family income" pursuant to subparagraph (B) of subdivision (6) of subsection (a) of this section, the Administrator shall:

(1) determine the total gross income of the individual and the individual's spouse, including cash contributions of any other family member to the individual's household, during the six months prior to the [hearing] fact-finding held under Section 31-273-2 of the Regulations of Connecticut State Agencies to determine whether the individual's overpayment should be waived, excluding any unemployment compensation which has been determined to be overpaid; and

(2) multiply such total income by two; and

(3) deduct any extraordinary medical expenses for which the individual is responsible but which are not covered by a health insurance plan.

(d) In order to determine whether an overpayment of benefits shall be waived pursuant to subdivision (6) of subsection (a) of this section, the Administrator may require the individual to

present any financial records, pay stubs, federal income tax returns, or other data deemed necessary for such determination. The Administrator may require the individual to provide such individual's spouse's social security number for the purpose of verifying the spouse's income.

(e) The Administrator shall publish annually tables which set forth income levels equal to one hundred and fifty percent of the poverty level, most recently published by the United States Department of Commerce, Census Bureau, in relation to family size. Such tables shall be utilized in making all determinations pursuant to subdivision (6) of subsection (a) of this section. Copies of such tables may be obtained by any individual, upon request, at any office of the Connecticut Labor Department, Employment Security Division.

Sec. 31-273-5. Fraud overpayments: Notice, [hearing] fact-finding and determination

(a) Where the Administrator determines that any individual has, by reason of fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another, received as benefits of any dollar amount while any condition imposed by Chapter 567 of the Connecticut General Statutes was not fulfilled, or has received any amount more than was due [him] the individual, such individual shall be charged with an overpayment of a sum equal to the amount so overpaid to the individual and shall be liable to repay to the Administrator such sum as well as any other penalties assessed by the Administrator in accordance with the provisions of [sections 31-273-6 and] section 31-273-6a of the Regulations of Connecticut State Agencies.

(b) If any individual charged by the Administrator with an overpayment, pursuant to subsection (a), does not make repayment in full of the sum overpaid, the Administrator shall recoup such sum as specified in Section 31-273-7 of the Regulations of Connecticut State Agencies.

(c) The Administrator shall, eight years after the payment of any benefits described in this section, cancel any claim for such repayment or recoupment which, in the Administrator's opinion, is uncollectible.

(d) Where the Administrator identifies a question of eligibility pursuant to Chapter 567 of the Connecticut General Statutes with respect to one or more weeks for which an individual was previously paid any sum of benefits or detects that an individual received more benefits than that to which such individual was entitled, and reasonably believes on the basis of available evidence that such receipt of benefits was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another, the Administrator shall notify the individual in writing of the identification of such question and that the individual has a right to a [hearing] fact-finding process to be held by the Administrator for the purpose of determining whether the individual was eligible for benefits for such week or weeks, and whether any benefits were received fraudulently. The notice shall inform the individual that if such individual does not exercise such right by notifying the Administrator within fourteen days of the date the notice was mailed, a decision will be rendered on the basis of the record available to the Administrator which may be appealed to the Employment Security Appeals Division. In addition, such notice shall advise the individual that an adverse determination will result in the imposition of an administrative penalty pursuant to [sections 31-273-6 and] section 31-273-6a of the Regulations of Connecticut State Agencies and may result in recoupment methods conducted pursuant to the provisions of Section 31-273-7 of the Regulations of Connecticut State Agencies.

If the individual exercises such individual's right to a [hearing] fact-finding, the Administrator shall give the individual adequate notice that a [hearing] fact-finding process will be held. [The notice] Notification of the fact-finding process shall include:

- (1) the time and date of such hearing;
- (2) notification as to the telephone hearing process if scheduled to be conducted by telephone;
- [(3)](1) information necessary for the claimant to submit evidence or [testimony for use at the

hearing, if applicable] statements, in the manner prescribed by the Administrator;

[(4)](2) notification that the [hearing] fact-finding will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

[(5)](3) identification of the question or questions of eligibility to be addressed [at such hearing] during such fact-finding;

[(6)](4) notice that a determination of ineligibility or non-entitlement for any week or weeks or part of any week or weeks will result in the charging of an overpayment to the individual;

[(7)](5) notice that if, following consideration of any question of eligibility or entitlement, there exists the possibility that the individual was overpaid benefits and the individual's receipt of such sum of benefits was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by such individual or through the agency of another, the individual shall also have the following issues considered [at the same hearing] during the same fact-finding:

(A) the exact amount of benefits overpaid to the individual, and

(B) whether or not the individual's receipt of such sum was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by such individual or through the agency of another for the purpose of obtaining benefits;

[(8)](6) notice that a finding of fraud, wilful misrepresentation or wilful nondisclosure pursuant to subdivision (5)(A) of this subsection can result in the imposition of an additional administrative penalty in accordance with [sections 31-273-6 and] section 31-273-6a of the Regulations of Connecticut State Agencies; [and]

[(9)](7) notice to the individual that if the individual fails to [appear at such hearing] participate in such fact-finding and a determination of ineligibility or non-entitlement is made, the Administrator will proceed to adjudicate the issues identified in subdivision (7) of this subsection and make a determination with respect to those issues on the basis of the record available to the Administrator. The [hearing] fact-finding process held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies [.] and

(8) notification that the examiner designated by the Administrator may prescribe a hearing by telephone or in person at the examiner's discretion, or upon request by a claimant, which request may not be unreasonably denied by the examiner.

(e) Where the individual is determined to be ineligible for benefits and overpaid as a result of fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another following a hearing described in subsection (d), the Administrator shall issue a determination which contains the following information:

(1) the reason the individual was ineligible for or not entitled to benefits;

(2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;

(3) the total amount of the overpayment;

(4) an administrative determination that the individual was overpaid because the individual, by such individual's own act of commission or omission or through the agency of another knowingly committed fraud, misrepresented a material fact or failed to disclose a material fact for the purpose of obtaining benefits;

(5) notice that such overpaid sum shall be repaid in full directly to the Administrator, and that if such sum is not repaid in full, it shall be recouped pursuant to the provisions of Section 31-273-7 of the Regulations of Connecticut State Agencies;

(6) the administrative penalty to be imposed, pursuant to [sections 31-273-6 and] section 31-273-6a of the Regulations of Connecticut State Agencies; and

(7) the individual's statutory appeal rights.

(f) Where an individual is determined to be ineligible for benefits but overpaid benefits for reasons

other than fraud, wilful misrepresentation or wilful nondisclosure by such individual or through the agency of another as the result of [a hearing] the fact-finding described in subsection (d) of this section, the Administrator shall notify the individual that the individual has the right to a [hearing] fact-finding in accordance with the provisions of subsection (d) of Section 31-273-2 of the Regulations of Connecticut State Agencies, which may, at the individual's option, be conducted immediately or within five business days.

Sec. 8. Section 31-273-8 of the Regulations of Connecticut State Agencies are amended as follows:

Sec. 31-273-8. [Hearing] Fact-finding procedure

(a) In any [hearing] fact-finding process conducted pursuant to Section 31-273-2 or Section 31-273-5, each party shall be afforded, subject to the Administrator's control:

- (1) The right to be represented by any person, including an attorney;
- (2) The right to inspect or copy any documents in the administrator's file which are material to the subject matter of the [hearing] fact-finding and not exempt from disclosure by law;
- (3) The right to present evidence, documents and [witnesses] witness statements; and
- (4) If a hearing is deemed necessary by the Administrator or the Administrator's representative for purposes of the fact-finding, [The] the right to cross-examine witnesses and parties, so long as the administrator deems such cross-examination to be material and relevant.

(b) The Administrator shall conduct and control any hearing held pursuant to Section 31-273-2 or Section 31-273-5 informally and shall not be bound by the ordinary common law or statutory rules of evidence or procedure. During the fact-finding process, [The] the Administrator shall make inquiry in such manner [through oral testimony and written and printed records] and take any action consistent with the impartial discharge of [his] the Administrator's duties, as is best calculated to ascertain the relevant facts and the substantial rights of the parties[, furnish a fair and expeditious hearing,] and render a proper and complete determination. The Administrator may at any time examine or cross-examine any party or witness, and require such evidence as he determines to be necessary for a proper and complete determination. The Administrator shall determine the order for presentation of evidence and [he] may exclude [testimony] statements and evidence which he determines to be incompetent, irrelevant, unduly repetitious, or otherwise improper. The Administrator shall, as [he] the Administrator deems necessary in the interests of justice, advise any party as to [his] the party's rights, aid [him] the party in examining and cross-examining witnesses, help [him] the party in presenting evidence and otherwise render such assistance as is compatible with the impartial discharge of the Administrator's duties.

(c) In any case involving an individual claiming benefits on an interstate basis, the Administrator shall attempt to conduct any [hearing] fact-finding process pursuant to Section 31-273-2 or Section 31-273-5 [by telephone] of the Regulations of Connecticut State Agencies. To the extent practicable, such [hearing] fact-finding shall be conducted in accordance with the procedures set forth in subsections (a), (b), and (c) of this section. [Where a hearing by telephone is not feasible, the] The Administrator shall [make written inquiry, elicit written testimony and printed evidence and] take any action consistent with the impartial discharge of [his] the Administrator's duties[,] as is best calculated to ascertain the relevant facts and substantive rights of the parties, furnish a fair and expeditious examination of the relevant issues, and render a proper and complete decision.

Sec. 9. Sections 31-244-1a to 31-244-4a, inclusive, of the Regulations of Connecticut State Agencies are amended as follows:

Sec. 31-244-1a. Definitions

As used in sections 31-244-1a through 31-244-9a inclusive:

(a) “Administrator” means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or the Commissioner’s designated representative.

(b) “Benefits” means unemployment compensation payable to an individual with respect to such individual’s unemployment under Chapter 567 of the Connecticut General Statutes.

(c) “Claimant” means an individual who is filing or has filed a claim for benefits.

(d) “[Predetermination hearing] Fact-finding process” means a [hearing] process called by the Administrator, pursuant to Section 31-241 of the Connecticut General Statutes, for the purpose of finding facts necessary to make a determination of eligibility for benefits.

(e) “Rebuttal” means an opposing or explanatory statement by an individual in response to potentially adverse information or a contradictory statement.

(f) “SIDES” means the Unemployment Insurance (UI) State Information Data Exchange System.

Sec. 31-244-2a. [Predetermination hearings] Fact-finding and Adjudication of Eligibility Issues

The Administrator shall [schedule a predetermination hearing] initiate a fact-finding process to determine an individual’s eligibility based upon evidence or statements presented in a manner prescribed by the Administrator, including in writing, by telephone, or by other electronic means in any instance in which (a) an individual’s claim for benefits indicates that the individual’s reason for unemployment presents an issue of eligibility under any provision of Subsection (d) of Section 31-227 or Section 31-236 of the Connecticut General Statutes, or Section 31-235 of the Connecticut General Statutes if the Administrator determines that the issue of the individual’s availability for work relates to the circumstances of the individual’s separation, or (b) the Administrator cannot reasonably determine from the individual’s claim or by contacting the separating employer [by telephone] at the time the claim is made that such individual’s reason for unemployment was lack of work or some other form of non-disqualifying involuntary termination.

Sec. 31-244-3a. Notice of [predetermination hearing] fact-finding process

(a) [Predetermination hearings are conducted telephonically. However, the Administrator may prescribe an in-person hearing at his or her discretion, provided if an in-person hearing is requested by either party, the request may not be unreasonably denied by the Administrator. The Administrator shall allow the claimant to participate solely by submitting a statement when the claimant has a compelling personal reason that prevents the claimant’s appearance in person or by telephone including but not limited to the claimant’s return to employment.] Upon detection of an eligibility issue, the Administrator shall initiate a fact-finding process based upon evidence or testimony presented in a manner prescribed by the Administrator, including in writing, by telephone, or by other electronic means. The examiner designated by the Administrator may prescribe a hearing by telephone or in person at the examiner’s discretion, provided if an in person hearing is requested by a party, the request may not be unreasonably denied by the examiner.

(b) The Administrator shall promptly provide notice of the [predetermination hearing] fact-finding process, including requisite response dates and information requested, to the individual and to the employer, through a mechanism specified by the Administrator, [of the date, time and place, if applicable, of the predetermination hearing,] as well as a brief statement of the reason for unemployment provided by the claimant to be adjudicated [at such hearing] subsequent to such fact-finding.

(c) [The hearing notice to the employer shall specify that the employer may elect to participate in

a predetermination hearing by telephone or by submitting a response to the hearing notice,] Notification to the employer shall specify that the employer's response [and that such response] shall contain the employer's account of the circumstances surrounding the individual's separation. The Administrator may provide specific questions to be answered by the employer in the method prescribed by the Administrator. The notice shall specify a time during which the employer's designated representative should be available [when telephone participation is elected] if a hearing is deemed necessary as part of the fact-finding process.

[(d) Where technologically feasible, the Administrator may authorize either party to participate in a predetermination hearing by other electronic means.]

[(e)](d) [The hearing notice] Notification of the fact-finding process shall inform the claimant and the employer of their rights [in the predetermination hearing], including but not limited to:

- (1) the right to be represented by any person, including an attorney;
- (2) the right to present evidence, documents and witnesses; and
- (3) if a hearing is deemed necessary by the Administrator or the Administrator's representative for purposes of the fact-finding, the right to cross-examine witnesses and parties, so long as the Administrator deems such cross-examination to be appropriate and relevant.

[(f)](e) The Administrator shall schedule [each predetermination] the hearing no earlier than the tenth calendar day following the issuance of notice of such hearing.

[(g)](f) Where no Notice of Separation is provided to the Administrator, the Administrator shall provide the [predetermination] hearing notice to the most recent address of record provided by the employer to the Administrator's Employer Status Unit. The Administrator shall provide the notice of the [predetermination] hearing either to the employer's address that appears on the Administrator's Notice of Separation form [(Form UC-61)] or, if the employer participates electronically in SIDES, to the employer's most recent electronic address.

Sec. 31-244-4a. Timeliness of an employer's response to notice of [predetermination hearing] fact-finding or in response to Administrator's request for information on a claim

In order to be considered timely for purposes of Section 31-241 and Section 31-273(k) of the Connecticut General Statutes, an employer's response to the Administrator's notice of a [predetermination hearing] fact-finding or request for information on a claim for unemployment compensation benefits must be actually received [by mail, in person or by electronic means] in the manner and within the time frame prescribed by the Administrator in the [Notice of Hearing] notice of fact-finding or request for information. Nothing in this section precludes consideration of a late response received before an eligibility determination is made, or subsequent to such determination in the Administrator's exercise of continuous jurisdiction under Section 31-243 of the Connecticut General Statutes. However, such consideration shall not relieve the employer of any charges imposed pursuant to Section 31-241 or 31-273(k) of the Connecticut General Statutes as a consequence of untimely response, unless good cause for such late participation is shown. For purposes of this section, "good cause" means (1) agency error, or (2) circumstances beyond the employer's or its agent's control which could not have been reasonably foreseen or prevented.

Sec 10. Sections 31-244-7a to 31-244-9a, inclusive, of the Regulations of Connecticut State Agencies are amended as follows:

Sec. 31-244-7a. Determination of adequacy of the employer's response

(a) An employer's response to notice of a [predetermination hearing] fact-finding must contain adequate information to be considered a timely response within the meaning of Section 31-241 of the

Connecticut General Statutes. To be considered adequate, an employer's response must (1) specify the reason for the separation, and (2) answer, in good faith, the questions corresponding to the appropriate separation issue, either by completing the appropriate areas of the questionnaire provided to the employer with the [predetermination hearing] notice of fact-finding or by submitting relevant alternate documentation, or both. The Administrator shall determine whether an employer's response is adequate. So long as an employer substantially complies with subdivisions (1) and (2) of this subsection, the Administrator shall determine that an employer's response is adequate.

(b) An employer's response to a request by the Administrator for information with respect to a claim for unemployment compensation benefits, including, but not limited to, any requests for additional information, shall be considered an adequate response within the meaning of section 31-273(k) of the Connecticut General Statutes if the response is provided in the manner prescribed by the Administrator in the request, is timely and is intended in good faith to respond to the request for information in the manner prescribed in such request.

Sec. 31-244-8a. Conduct of the [predetermination hearing] fact-finding

(a) In the event the Administrator determines that a hearing is necessary as part of the fact-finding process, [The] the Administrator will control and conduct the [predetermination] hearing informally through examination of the record and direct questioning as the Administrator determines necessary for a proper and complete decision.

(b) In [conducting the hearing] the fact-finding process, the Administrator will not be bound by the ordinary common law or statutory rules of evidence or procedure.

(c) The issue(s) addressed [at the predetermination hearing] in the fact-finding process will be confined to the issue(s) listed on the [hearing] notice. A [hearing] fact-finding will not be conducted regarding any other eligibility issue which is identified by the Administrator during the [predetermination hearing] fact-finding process unless the parties are afforded proper notice of such issue and [hearing] an opportunity to respond to such issues.

(d) An issue stated in terms of a voluntary leaving or a discharge shall generally be construed to be a single issue covering the separation from employment so that the record may be developed on either or both kinds of separation.

(e) The Administrator may limit or deny a party's right to cross-examination whenever the Administrator determines that such cross-examination is not producing or would not produce information useful or relevant to adjudication of the claim.

(f) The Administrator may limit or exclude from the record [testimony] statements, documents or other evidence which the Administrator determines to be incompetent, irrelevant, unduly repetitious or otherwise improper.

(g) The Administrator shall not permit any individual [present at the predetermination hearing] participating in the fact-finding process to engage in improper behavior or tactics which disrupt the fair, orderly, efficient and effective conduct of the [hearing] process. The Administrator may, at the Administrator's own discretion, take any action the Administrator deems necessary to prevent or discontinue such behavior or tactics, including termination of the hearing, if such is deemed necessary by the Administrator.

(h) During [a predetermination hearing] the fact-finding process, on the Administrator's own motion or on the motion of any interested party, and at the sole discretion of the Administrator, a continuance may be granted for good cause and the record kept open for a specified period of time.

[i] The Administrator shall contact by telephone any party who has provided timely notice of an intent to participate by telephone on the date of the scheduled hearing at the time specified on the hearing notice.]

[(j)](i) The Administrator may develop and utilize any forms or questionnaires deemed necessary

for use in the [hearing] fact-finding process.

[(k)](j) The Administrator shall take all steps necessary to insure that any party[, whether participating in person, in writing, by telephone or by other electronic means to a predetermination hearing,] is afforded appropriate opportunity for rebuttal. However, where an employer's participation is limited to a statement and the employer has not indicated an interest in otherwise participating [by telephone] in the fact-finding process, the Administrator will attempt to contact the employer where there is a clear conflict between the factual accounts offered by each party and adjudication of the fact(s) in dispute is necessary to disposition of the claim. [Where information resulting from such contact is provided by the employer when the claimant is no longer physically or telephonically present, the] The claimant shall be informed of the information provided by the employer. The claimant shall be provided an appropriate opportunity for rebuttal of any potentially disqualifying information acquired as a result of such contact, regardless of when such information was provided.

[(l)](k) The Administrator shall use best efforts to accurately summarize and record in writing the relevant statements of both parties and any witnesses [in a predetermination hearing] who participated in the fact-finding and shall further use best efforts to verify that the statement accurately reflects the parties' [testimony] statements or information presented.

[(m)](l) Where either party makes a request, the Administrator shall provide within a reasonable time period, a copy of any adjudicative report created by the Administrator during [a predetermination hearing] the fact-finding process.

Sec. 31-244-9a. Employer's appeal of charges resulting from its nonparticipation in the [predetermination hearing] fact-finding process or in response to a request for information by the Administrator.

The issue of an employer's non-participation in a [predetermination hearing] fact-finding or in response to a request for information by the Administrator may not be the subject of an appeal to an Employment Security Appeals Referee until the effect of such non-participation is reflected in (1) a statement of quarterly charges (Form UC-54Q) in the case of a contributing employer, (2) in the case of a reimbursing employer, a monthly billing statement, or (3) in the case of an out-of-state employer, first notification to the employer from the Administrator. The employer may appeal its assessment of charges resulting from its non-participation in the [predetermination hearing] fact-finding process upon receipt of the first statement of quarterly or monthly charges which includes charges resulting from the employer's non-participation [at the predetermination hearing]. Such statement of quarterly or monthly charges shall be the only determination of the Administrator through which the issue of nonparticipation may be appealed. A contributing employer's appeal from this determination must be made pursuant to the provisions of Section 31-225a(h)(3) of the Connecticut General Statutes. A reimbursing employer's appeal from this determination shall be made pursuant to the provisions of Section 31-225(g)(2)(D) of the Connecticut General Statutes.

Sec 11. Sections 31-235-7, 31-235-21, and 31-235-24 to 31-235-26, inclusive, of the Regulations of Connecticut State Agencies are repealed.

R-39 Rev. 02/2012

Statement of Purpose

The purpose of these regulatory changes are (1) make technical changes for purposes of the Department's modernization initiative (2) update work search requirements.