

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Unemployment Insurance

REGULATIONS CONCERNING EMPLOYMENT SECURITY

7 CCR 1101-2

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

PART I GENERAL PROVISIONS

1.1 PREAMBLE

Pursuant to the provisions of 8-72-102, C.R.S., and other provisions of the *Colorado Employment Security Act*, the industrial commission of Colorado, ex officio, unemployment compensation commission of Colorado hereby adopts and promulgates the following regulations.

1.2 PURPOSE AND SCOPE

The purpose of these regulations effective March 3, 1980, is to implement the procedural and substantive provisions of the *Colorado Employment Security Act*.

1.2.1 Basis and Purpose for the 1983 Amendments. - The amendments and reenactments and renumbering of the regulations effective August 30, 1983, are caused by requirements of legislative enactments that require conformity in the implementing regulations, and the necessities for clarifications and elaborations in the regulations to ensure continuing fairness in administration and adjudication of claims for benefits and appeals from adjudications; and in just determination of appeals and petitions at a reasonable expense to parties and the administering agencies.

1.2.2 Basis and Purpose for the 1984 Amendments. - The amendments effective October 30, 1984, are promulgated by the commission pursuant to 8-72-102 and 24-4-103, C.R.S., for the purpose of clarifying and defining more fully the procedural rights and duties of claimants for unemployment benefits, employers, and other interested parties, and are calculated to implement the *Colorado Employment Security Act*, C.R.S. title 8, articles 70 to 82 as amended, more fairly and efficiently, and to further its stated purposes; and to implement the purpose of harmony in state administration with federal statutes and regulations; and the requirements for effective appeals or petitions for review of administrative determinations; and the duties and liabilities of parties in communications with the administrative authorities in matters of claims for benefits and notices and determinations related thereto.

These amendments to rules and regulations result from recent legislative enactments upon employment security; from a public hearing held in accordance with 24-4-103, C.R.S., and the entire record connected thereto; and from comments and advice offered during proceedings of the legal affairs committee within the Colorado Department of Labor and Employment that is concerned, as is the commission, with just and efficient administrative practices and response to the needs for changes and prospective improvements in procedure, including the areas of claims, hearing, and appeals.

- 1.2.3 Basis and Purpose for the 1985 Amendments.** - The amendments effective September 30, 1985, are adopted pursuant to 8-72-102, C.R.S., for the purpose of conformity with new legislation, clarification of the substantive and procedural rights and responsibilities of interested parties, and increased efficiency and effectiveness in the fair administration of the *Colorado Employment Security Act*, including the appeal process.
- 1.2.4 Basis and Purpose for the 1987 Amendments.** - The amendments effective January 1, 1988, are adopted pursuant to 8-72-102, C.R.S., for the purpose of conformity with new legislation, clarification of the substantive and procedural rights and responsibilities of interested parties, and increased efficiency and effectiveness in the fair administration of the *Colorado Employment Security Act*, including the appeal process.
- 1.2.5 Basis and Purpose for the 1991 Amendments.** - The amendments effective October 1, 1991, are adopted pursuant to 8-72-102, C.R.S., for the purposes of conformity with new legislation, facilitating the reorganization of the division and its operations, and removing obsolete language from the regulations.
- 1.2.6 Basis and Purpose for the 1992 Amendments.** - The amendments effective August 3, 1992, are adopted pursuant to 8-72-102, C.R.S., for the purpose of transferring to the industrial claim appeals office certain procedural responsibilities concerning appeals from referees' decisions, to facilitate increased efficiency and effectiveness in the administration of the appeals process, and to effectuate the 1992 amendments to 8-74-104(3), C.R.S., and enactment of 8-74-104 (4), C.R.S.
- 1.2.7 Basis and Purpose for the 1994 Amendments.** - The amendments effective July 1, 1994, are adopted pursuant to 8-72-102, C.R.S., for the purpose of more fully describing claim-filing requirements, clarifying administrative-appeals procedures, and removing obsolete provisions from the regulations.
- 1.2.8 Effective Date for the 1994 Amendments.** - The rules adopted on May 4, 1994, are effective on July 1, 1994.
- 1.2.9 Basis and Purpose for the 1997 Amendments.** - The amendments effective January 1, 1998, are adopted pursuant to 8-72-102, C.R.S., for the purpose of modifying statutory citations, clarifying eligibility requirements, removing obsolete provisions concerning the Head Start Program, conforming quarterly tax and wage reporting to federal-law requirements, modifying hearing-document exchange and good-cause provisions, and outlining criteria for the write-off of recovery and the waiver of recovery of benefit overpayments.
- 1.2.10 Effective Date for the 1997 Amendments.** - The rules adopted on November 6, 1997, are effective on January 1, 1998.
- 1.2.11 Basis and Purpose for the 1998 Amendments.** - The amendments effective January 1, 1999, are adopted pursuant to 8-72-102, C.R.S., for the purpose of making technical corrections, modifying provisions concerning claims for benefits, promoting increased effectiveness in the administration of the appeals process, and conforming interstate provisions to arrangements with other states.
- 1.2.12 Effective Date for the 1998 Amendments.** - The rules adopted on November 6, 1998, are effective on January 1, 1999.
- 1.2.13 Basis and Purpose for the 2000 Amendments.** - The amendments effective January 1, 2001, are adopted pursuant to 8-72-102, C.R.S., for the purpose of modifying provisions concerning approved training and improving clarity and uniformity in the regulations.

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- 1.2.14 Effective date for the 2000 Amendments.** - The rules adopted on November 1, 2000, are effective on January 1, 2001.
- 1.2.15 Basis and Purpose for the 2002 Amendments.** - The amendments effective January 1, 2003, are adopted pursuant to 8-72-102, C.R.S., for the purpose of expanding the methods for the division, the panel, and their customers to conduct business through use of technology and harmonizing the regulations with the provisions of 8-76-101(3), C.R.S., concerning quarterly taxes due that are less than five dollars.
- 1.2.16 Effective Date for the 2002 Amendments.** - The rules adopted on October 30, 2002, are effective on January 1, 2003.
- 1.2.17 Basis and Purpose for the 2008 Amendments.** - The amendments effective February 1, 2009, are adopted pursuant to 8-72-102, C.R.S., for the purpose of modifying provisions required by legislative enactments to facilitate increased efficiency and effectiveness in the administration of the appeals process, to include the employee -leasing company requirements, and to remove obsolete language from the regulations concerning employment security.
- 1.2.18 Effective Date for the 2008 Amendments.** - The rules adopted on November 12, 2008, are effective on February 1, 2009.
- 1.2.19 Effective Date for the 2009 Amendments.** - The rules adopted on August 14, 2009, are effective on October 30, 2009.
- 1.2.20 Basis and Purpose for the 2009 Amendments.** - The amendments effective October 30, 2009, are adopted pursuant to 8-72-102, C.R.S, to:
- .1 Reflect the changes in the reporting requirements for employee-leasing companies in part xvi.
 - .2 Create processes related to employee misclassification by adding new Part XVII.
 - .3 Modify provisions required by legislative enactments to add a definition for remuneration in part I.
 - .4 Reflect statutory amendments in part ii, by allowing for a work-search waiver for an individual who has a qualifying job separation under 8-73-108 (4) (t) C.R.S, and;
 - .5 Extend the waiver of the requirements to register for work and report to an employment office as a condition of being eligible to receive unemployment insurance benefits for a claimant who is job-attached.
- 1.2.21 Effective Date for the 2009 Amendments.** The rules adopted on October 30, 2009, are effective on December 30, 2009.
- 1.2.22 Basis and Purpose for the 2009 Amendments.** The amendments effective December 30, 2009, are adopted pursuant to 8-72-102, C.R.S., for the purpose of modifying provisions required by legislative enactments to facilitate increased efficiency and effectiveness in the administration of the appeals process, and to include House Bill 09-1363, Unemployment Compensation Enterprise requirements to the Regulations Concerning Employment Security.

1.2.23 Basis and Purpose of the 2011 Amendments. - The rules adopted on November 14, 2011, are effective January 1, 2012 for the purpose of:

- .1 Improving communication with claimants in regards to what defines an active work search.
- .2 Amending the rules related to actively seeking work to add clear definitions of what represents a work search. Additionally, adding further explanation that a tangible record of contacts is required, what a tangible record is, and the length of time the record must be maintained by a claimant.
- .3 Adding new rules allowing the Division to issue a formal warning, at its discretion, to a claimant who unintentionally fails to meet the work-search requirements.

1.2.24 Basis and Purpose of the 2012 Amendments. - The rules adopted on November 22, 2011, are effective April 1, 2012 for the purpose of:

- .1 Amending the rules related to unemployment insurance appeals and redeterminations for clarity.
- .2 Amending the rules related to good cause for clarity.
- .3 Adopting rules allowing the Division to fine an employer who is found to have willfully disregarded the law when misclassifying an employee as an independent contractor.

1.2.25 Basis and Purpose of the 2012 Amendments. - The rules adopted on January 18, 2012, are effective April 1, 2012 for the purpose of:

- .1 Amend the rules regarding employer reports, specifically a wage or separation report on a specific worker to include a statement that good cause is automatically found when the separation report is received after the deadline but before a decision is issued. As appropriate, add the new reference on good cause to other rules within this Part.
- .2 Repeal a portion of the rule regarding a decision of the hearing officer that no longer applies.
- .3 Amend the rules regarding good cause procedure to allow Unemployment Insurance Appeals to make a determination of good cause without specifically requesting a good-cause statement from the appellant if the file material contains the necessary information.

1.2.26 Basis and Purpose of the May 2012 Amendments. – The rules adopted on April 2, 2012, are effective May 30, 2012 for the purpose of amending the rules to allow the Division to take the postmark date into account when determining the timeliness of the receipt of a premium payment and quarterly report.

1.2.27 Basis and Purpose of the May 2012 Amendments. – The rules adopted on June 4, 2012 are effective July 30, 2012. The Division of Unemployment Insurance reviewed all rules currently in effect. The review found rules that are redundant to statute and/or outdated. The following amendments are proposed to simplify the Division's rules:

- .1 Repeal rules that repeat statute and renumber the remaining Definitions in Part I.
- .2 Amend rules to clarify that an employer is not required to pay premiums that are less than \$5 as long as the quarterly reports are submitted timely in Part VI, Premiums and Assessments.

- .3 Repeal reporting methods that cannot be accepted for employer quarterly reports in Part VII, Employer Records and Reports.
- .4 Repeal a portion of the employee-leasing companies rules that is no longer applicable in Part XVI, Employee-Leasing Companies.
- .5 Repeal rules that repeat statute and renumber the remaining rules in Part XVII, Work Share.

1.2.28 The rules adopted on July 18, 2012, are effective September 14, 2012. The Division of Unemployment Insurance amended the following rules to address legislative changes made during the 2012 Colorado General Assembly.

- .1 Amend references to the Unemployment Insurance Program to be the Division.
- .2 Amend the definition of the division to conform to statute creating the Division of Unemployment Insurance.
- .3 Amend references to the Unemployment Insurance Program to be the Division and extend the date by which enhanced benefits can be paid to June 30, 2014, to conform to the law.
- .4 Amend rules on the application of delinquent payments to include nonprincipal-related bond payments.

1.2.29 The rules adopted on March 13, 2013, are effective May 15, 2013. The Unemployment Insurance Division reviewed all rules currently in effect. The review found rules that are redundant to statute and/or outdated. The following amendments are proposed to simplify the Unemployment Insurance Program's rules.

- 1. Repeal rules regarding emergency rules that were later promulgated into permanent rules, and the effective date of the permanent rules are included in the details of that promulgation.
- 2. Repeal a rule that is no longer applicable, and clarify income derived from investment-interest payments.
- 3. Clarify that a spousal relationship is defined by Colorado law.
- 4. Amend rules regarding the timelines for requesting redeterminations to extend the time from fifteen (15) days to twenty (20) days.
- 5. Amend rules for clarity, and repeal sections that are no longer applicable. Renumber remaining sections.
- 6. Repeal a rule that is no longer applicable.

1.3 DEFINITIONS

As used in these regulations, the following words shall have the following meanings:

- .1 **Commission.** - The word "commission" shall mean the Industrial Commission of Colorado, ex officio, Unemployment Compensation Commission of Colorado as it existed prior to July 1, 1986.

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- .2 Division.** - The word “division” shall mean the Division of Unemployment Insurance of the Department of Labor and Employment of the State of Colorado.
- .3 Act.** - The word “act” shall mean the Colorado Employment Security Act , articles 70 to 82 of title 8, C.R.S., unless the context clearly indicates otherwise.
- .4 Benefits.** - The word “benefits” shall mean unemployment compensation benefits payable to claimants under the act.
- .5 Calendar Week.** - The term “calendar week” shall mean a period of seven consecutive days beginning at 12:01 a.m. on Sunday and ending at midnight on the following Saturday.
- .6 Public Employment Office.** - The term “public employment office” shall mean any workforce center, itinerant service point, or representative thereof.
- .7 Panel.** - The word “panel” shall mean the industrial claim appeals panel that conducts administrative appellate review of any decision entered pursuant to article 74 of title 8, C.R.S.
- .8 Examiner.** - The word “examiner” shall mean one of the industrial claim appeals examiners appointed to the panel.
- .9 Attendance.** - The term “attendance” shall mean participation in hearings before a hearing officer by telephonic means or in person.
- .10 Written, in Writing.** - The terms “written” and “in writing” shall mean:
- .1** Decisions, determinations, notices, account statements, and documents provided by the division or the panel to an interested party, or their authorized representative, if any, in person, by mail, by facsimile machine, or by electronic means.
- .2** Appeals, applications, documents, elections, forms, notices, protests, reports, and requests submitted to the division or the panel by an interested party, or their authorized representative, if any, when handwritten or typed, transmitted using division-approved electronic means and formats, or panel-approved electronic means, or provided using a division interactive voice response system when this method is expressly permitted by regulation.
- .11 Signed, Signature.** - When information submitted to the division is required to be signed, the personal identification number (PIN) shall be considered the same as a signature when a claimant, an employer, or authorized representative thereof uses division-approved electronic means or uses a division interactive voice response system.
- .12 Personal Identification Number (PIN).** - The term “personal identification number (PIN)” shall mean a confidential number or other electronic method of verification unique to a claimant, an employer, or authorized representative thereof that shall be required for such persons to perform certain transactions with the division by electronic means or by a division interactive voice response system.
- .13 Electronic.** - The term “electronic” shall have the meaning set forth in 8-70-103 (8.5), C.R.S., and, for purposes of these regulations, said meaning shall include the Internet and any other technology the division in its discretion may approve, or when appropriate, the panel may approve.
- .14 Facsimile Machine.** - The term “facsimile machine” shall mean a device that electronically or telephonically receives and transmits reproductions or facsimiles of documents.

- .15 **Transmit.** - The term “transmit,” or any derivative thereof, shall mean by facsimile machine, by electronic means, or by a division interactive voice response system unless the context clearly indicates otherwise.
- .16 **Mail.** - The term “mail” shall mean delivery through the United States Postal Service or by other commercial carrier, but not by electronic or telephonic means.
- .17 **Interactive Voice Response System.** - The term “interactive voice response system” means the division’s automated interface between a caller using a telephone and a division computer.
- .18 **By Telephone.** - The term “by telephone” means verbal communication using a telephone instrument or communication using a telephone device for the deaf (TDD). Said term does not include information transmitted by “electronic” means pursuant to regulation 1.3.14 or information transmitted using an “interactive voice response system” pursuant to regulation 1.3.18.
- .19 **Corrected Decision.** - The term “corrected decision” shall refer to a decision issued by a deputy or a hearing officer or the panel, within 30 days subsequent to the date of his decision, to correct typographical or clerical or other minor errors. A “corrected decision” is not a reconsidered decision as provided by 8-74-105, C.R.S. Notice of a corrected decision shall promptly be given to all interested parties.
- .20 **The term “remuneration,”** - as used in §8-73-110, C.R.S., shall mean any payment the individual receives from the employer which the individual would not have received had he or she not separated from employment.
- .21 **Negative Excess Employer.** - The term “negative excess employer” shall mean an employer who has more in unemployment benefits charged to his or her account as compared to unemployment premiums paid and credited to his or her account.
- .22 **Fringe Benefits.** - The term “fringe benefits” shall mean health insurance, retirement benefits received under a pension plan, paid vacation days, paid holidays, paid sick leave, and any other similar employee benefit that is provided by an employer.
- .23 **Work Share Benefits.** - The term “work share benefits” shall mean the unemployment benefits payable to employees in an affected unit under an approved work share plan as distinguished from the unemployment benefits otherwise payable under the conventional unemployment compensation provisions of the Colorado Employment Security Act.
- .24 **Participating Employer.** - The term “participating employer” shall mean an employer who has a work share plan in effect.
- .25 **Participating Employee.** - The term “participating employee” shall mean an employee who works a reduced number of hours under a work share plan.
- .26 **“Federal Program”** means any federal- and state-extended benefits program under federal law that provides benefits to exhaustees of regular benefits during times of high unemployment or economic downturn and any program that pays benefits under federal law, including but not limited to, Disaster Unemployment Assistance.

1.4 USE OF PRONOUNS

As used in these regulations, “he,” “his,” and “him” shall refer to individuals of either gender, and also, where appropriate, to entities and organizations.

1.5 REPEAL

All rules and regulations enacted previous to March 3, 1980, relating to employment security are hereby repealed.

1.6 SUBSTITUTION OF THE WORD "PREMIUM" FOR THE WORD "TAX".

Wherever the word "tax(es)" appears in these rules said word(s) shall be replaced by the word "premium(s)".

1.7 AMENDMENT OF REGULATIONS CONCERNING EMPLOYMENT SECURITY BY EMERGENCY RULE MADE PERMANENT

1.7.1 Statement of Basis and Purpose as to Emergency Rule Made Permanent. - The emergency rule, adding a new subsection .11 to regulation 11.2.15 of part XI of the *Regulations Concerning Employment Security*, was promulgated and made permanent to comply with 8-74-104(1), C.R.S. (1985 Cum. Supp.), that required the commission to promulgate a rule regarding briefing schedules on first appeal to the commission. The rule establishes a simultaneous briefing schedule for such appeals and codifies existing division procedure for processing such appeals.

1.7.2 Authority. - The emergency rule was promulgated effective January 2, 1986, pursuant to the industrial commission's authority in 8-72-102 and 24-4-103(6), C.R.S., having to do with promulgation of emergency rules. The commission found that said adoption and promulgation as an emergency rule was imperatively necessary for the preservation of health, safety, and welfare, and of substantive and procedural rights of parties to unemployment compensation appeals, and that compliance with the ordinary provisions and requirements for notice and prior public hearing, as provided by 24-4-103, C.R.S., would be contrary to the public interest; and such finding by the commission has been duly set forth in the commission resolution adopting the emergency rule dated January 2, 1986.

1.7.3 Permanency of Emergency Rule. - The commission, pursuant to said section 24-4-103, C.R.S., and after duly published notice and public hearing, now promulgates said rule as a permanent rule, adding a new subsection .11 to existing regulation 11.2.15 of existing part XI of the *Regulations Concerning Employment Security*, 7 C.C.R. 1101-2.

1.7.4 Effective Date of Rule. - This rule shall be effective 20 days after publication.

1.7.5 Repealed

1.8 DATE OF FILING.

Where part II, part V, part VI, part VII, part X, part XI, part XII, part XIII, or part XV of these regulations provides for the filing of documents, the date of filing shall be the date received, if mailed or filed in person, the receipt date encoded on a facsimile document, or the receipt date recorded by the division's automated systems if filed using division-approved electronic means or a division interactive voice response system unless the regulation specifically provides otherwise.

1.9 DIVISION OR PANEL COMMUNICATIONS.

The division or panel may request information from an interested party and their authorized representative, if any, by personal delivery, by mail to their last known address as shown in the division's or panel's records, by telephone, by facsimile machine, or by electronic means. Any decision, determination, notice, or statement that conveys protest or appeal rights shall be provided in accordance with articles 70 to 82 of title 8, C.R.S., and these regulations.

1.10 USE OF PERSONAL IDENTIFICATION NUMBER (PIN).

It is the responsibility of a claimant, an employer, or authorized representative thereof who uses a PIN to keep that information confidential. Use of said PIN by any third party to obtain, increase, delay, prevent, or reduce benefit payments shall be subject to the provisions of 8-81-101, C.R.S., and the regulations pursuant thereto.

1.11 MAILING ADDRESS OF PARTIES.

It is the responsibility of a claimant, an employer, or authorized representative thereof to keep the division promptly and directly informed of the party's current and correct mailing address. Parties may notify the division of a change of address by providing a written, signed statement in person, by mail, by facsimile machine, by division-approved electronic means, or via cubline, the division's interactive voice response system.

PART II CLAIMS FOR BENEFITS

2.1 REGISTRATION AND FILING CLAIMS

2.1.1 Statutory References. 8-70-111 (2)(a), 8-70-112, 8-73-107 (1)(a)(b)(e)(h), and 8-74-101 (1), C.R.S.

2.1.2 Work Registration. To qualify for benefits, an unemployed worker must register for work when instructed by the division. Failure to register for work when so instructed may result in a disallowance of benefits pursuant to regulation 2.1.6.

2.1.3 Filing an Initial, Additional, or Reopened Claim. The claimant may file an initial, additional, or reopened claim by division-approved electronic means, by telephone, by mail, or in person at the discretion of the division. Unless otherwise determined by the division, filing claims by division-approved electronic means and by telephone shall be the preferred methods of filing.

.1 If the division determines that the claimant's interests would be better served by an alternative method of claim filing, an individual may be permitted to file a claim by mail or in person. The division shall determine which alternative method of claims filing the claimant may use.

.2 If the division determines that an individual may file by mail, the following criteria shall be used in addition to the criteria contained in regulation 2.3.5 in determining the effective date of the claim:

.1 The claimant must fill out the prescribed claim form completely and correctly in order to establish a valid claim.

.2 The effective date of the claim may not be established until the claim form is correctly completed by the claimant and received by the division. If the information on the form is not complete, it may be returned to the claimant for correction. The time the corrected claim is received by the division may establish the effective date.

2.1.4 Completion of the Required Forms. After filing an initial, additional, or reopened claim, the claimant will be issued the necessary forms that must be completed and returned to the division. At the discretion of the division, completed forms may be returned to the division in person, by mail, by facsimile machine, or by division-approved electronic means. Failure to return the completed forms could result in a disallowance of benefits.

- 2.1.5 Reporting in Person.** The division may, at its discretion, require a claimant to report in person to a public employment office to comply with such requirements as deemed necessary to demonstrate eligibility for benefits.
- 2.1.6 Failure to Report.** Failure by the claimant to comply with a request to report in person, by telephone, by mail, by facsimile machine, or by division-approved electronic means as directed by the division or to provide the division with necessary information or documentation when so requested could result in a disallowance of benefits, unless good cause is shown.
- 2.1.7 Filing a Continued Claim.** A continued claim is a request filed for waiting-period credit or payment for one or more weeks of unemployment. Continued claims shall be filed by interactive voice response system or by division-approved electronic means unless the division permits a continued claim to be filed by mail or in person because filing by interactive voice response system or by division-approved electronic means would cause undue hardship for an individual. Continued claims shall be filed on a weekly or biweekly basis, as directed by the division.
- .1 Claims Filed by Interactive Voice Response System.** A continued claim shall be filed by the claimant after the last day of the week(s) for which the claim is made, but not later than fourteen calendar days following the last day of such week(s) using CUBLine, the division's interactive voice response system.
- .2 Claims Filed by Division-Approved Electronic Means.** A continued claim shall be filed by the claimant after the last day of the week (s) for which the claim is made, but not later than fourteen calendar days following the last day of such week (s). The transmittal date recorded by the division's automated systems shall determine the date of filing.
- .3 Claims Filed by Mail.** In the event that filing a continued claim by mail is permitted by the division, such claim shall be completed, signed by the claimant, and received by the central office of the division after the last day of the week(s) for which the claim is made, but not later than fourteen calendar days following the last day of such week(s).
- .4 Claims Filed in Person.** In the event that filing an in-person continued claim is permitted by the division, a completed claim, signed by the claimant, shall be filed in person at a public employment office or at the central office of the division. Such claim shall be submitted after the last day of the week(s) for which the claim is made, but not later than fourteen calendar days following the last day of such week(s).
- 2.1.8 Temporary Absence From State.** Claimants who reside in Colorado and temporarily leave the state to seek employment and, while absent from the state, satisfy the eligibility requirements set forth in 8-73-107, C.R.S., and the regulations pursuant thereto will be allowed to file continued claims from out-of-state. Upon a claimant's relocation to another state, the provisions of regulation 13.1 shall apply.
- 2.1.9 Nonreceipt of Forms.** If prescribed continued-claim forms are not received by the claimant by mail, the claimant must request such forms from the division.
- 2.1.10 Exceptions to Time Limits.** Acts under this section 2.1 may be permitted out of time only under limited circumstances, but regardless of whether an individual has met the requirements of this section 2.1.10, no act under this section 2.1 shall be permitted more than six months beyond the last day of the applicable time period. Exceptions for untimely acts that occur within the allotted six months may be granted only if the following standards apply.

- .1 **Work Registration and Requested Reports.** The division may, for good cause shown, permit an individual to register for work or provide requested reports to the division outside the required time period without loss of eligibility. For the purposes of this subsection, good cause shall have the meaning set forth in regulation 12.1.8.
- .2 **Continued Claims.** The division may permit filing a continued claim out of time as set forth in regulation 2.1.7 only if the individual establishes to the satisfaction of the division that he or she exercised no control over the circumstances of the untimely filing. Being unaware of the need to timely file shall not be considered a factor outside an individual's control.
- .3 **Initial, Additional, Reopened Claims.** When an initial, additional, or reopen claim is filed, the first week of that claim shall be determined in accordance with regulation 2.3.5. The division may permit a change in the first week of an initial, additional, or reopened claim only if the individual establishes to the satisfaction of the division that he or she exercised no control over the circumstances of the untimely filing. Being unaware of the need to timely file shall not be considered a factor outside the individual's control.

2.1.11 Cancellation of Initial Claim. When a benefit year is established as a result of a valid initial claim, such claim may be cancelled only when:

- .1 Part XIII of the regulations concerning interstate and combined-wage claimants applies, or
- .2 The claimant requests cancellation in person, by mail, by facsimile machine, by division-approved electronic means, or by telephone within twelve calendar days from the date of such filing. Requests to cancel a valid initial claim made after the twelve-day period shall be denied without consideration of good cause or whether the individual exercised any control over the circumstances of the untimely request.

2.1.12 Tax-Withholding Option for Federal Programs. Claimants may choose a tax-withholding option upon initially applying for a federal program, as defined in Regulation 1.3.31, for which claimants receive a notice of monetary determination.

2.2 BENEFITS RIGHTS OF PART-TIME WORKERS

2.2.1 Statutory References: 8-73-103, 8-73-104 (1), 8-73-105, 8-73-106 (1), and 8-73-107, C.R.S.

2.2.2 Eligibility. An unemployed part-time worker as defined in 8-73-105 (1), C.R.S., who worked part-time for the majority of weeks of work in his or her base period for one or more employers and whose availability is restricted to part-time work shall be eligible for benefits pursuant to this section.

2.2.3 Able, Available, and Actively Seeking Work. Any unemployed part-time worker shall be deemed to have met the requirements of 8-73-107 (1)(c) and (g), C.R.S., if:

- .1 Said worker is able to work, available for work, and actively seeking his or her customary part-time work or other part-time work for which he or she is qualified; and
- .2 Such part-time work exists in the labor-market area.

2.2.4 Totally Unemployed Part-Time Seasonal Worker. Benefit rights of an unemployed part-time worker who is also a seasonal worker shall be determined pursuant to 8-73-104 (1), C.R.S.

2.2.5 Partially Unemployed Part-Time Worker. Benefit rights of partially unemployed part-time workers who meet the requirements of regulation 2.2.2 and who receive a reduction in customary work hours shall be determined in accordance with 8-73-103, C.R.S.

2.2.6 Regular Part-Time Worker. Regular part-time employment is defined to be that part-time base-period employment from which a claimant has not separated at the time of filing a valid initial claim and that was present with other full-time or part-time base-period employment. Benefits are not payable with respect to wages from regular part-time employment until a claimant becomes separated from such employment and then only for those weeks occurring after said separation.

2.3 WEEK OF UNEMPLOYMENT

2.3.1 Statutory References: 8-70-103 (19)(28)(30), 8-70-112, 8-73-107 (1)(d)(f)(h), and 8-74-101, C.R.S.

2.3.2 Week of Unemployment. Except as provided in regulations 2.3.4 and 2.3.5, a week of unemployment shall be the calendar week in which the individual files an initial, additional, or reopened claim with the division and each calendar week immediately following any such week for which said individual has filed a continued claim as provided by regulation or has failed to do so and has established to the satisfaction of the division that he or she exercised no control over that failure. However, no week shall be considered a week of unemployment unless the individual has worked less than thirty-two hours during such week, earned less than his or her weekly benefit amount, and has filed an initial, additional, or reopened claim not later than Wednesday of that week or has filed a continued claim pursuant to regulation 2.1.7.

2.3.3 Area Served by Itinerant Service Point. A week of unemployment for an individual who resides in an area served only by an itinerant service point of the division shall be the calendar week in which such individual became unemployed, if such individual files an initial, additional, or reopened claim at such itinerant service point at the first opportunity thereafter, and each calendar week immediately following such week for which such individual has filed a continued claim as provided by regulation or has failed to do so and has established to the satisfaction of the division that he or she exercised no control over that failure. However, no week shall be considered a week of unemployment unless the individual has worked less than thirty-two hours during such week and earned less than his or her weekly benefit amount.

2.3.4 Failure to Meet Requirements. A week of unemployment for an individual who has failed to timely file an initial, additional, or reopened claim for benefits as provided in these regulations shall be the earliest calendar week in which the individual established to the satisfaction of the division that he or she exercised no control over the circumstances of the failure to act timely. Thereafter, weeks of unemployment shall be the calendar weeks immediately following any such week for which the individual has filed a continued claim as provided by regulation, or has failed to do so and has established to the satisfaction of the division that he or she exercised no control over that failure. However, no week shall be considered a week of unemployment unless the individual has worked less than thirty-two hours during such week and earned less than his or her weekly benefit amount.

2.3.5 First Week for Claims. To begin a claims series by reason of an initial, additional, or reopened claim, an individual's first week in the claims series shall be determined as follows:

- .1 If the individual files a claim on Monday, Tuesday, or Wednesday, the first day of the first week in the claims series shall begin on the Sunday immediately preceding the day on which said claim was filed.

- .2 If the individual files a claim on Thursday, Friday, or Saturday, the first day of the first week in the claims series shall begin on the Sunday immediately following the day on which said claim was filed.

2.4 JOB ATTACHMENT.

2.4.1 Statutory References: - 8-73-107 and 8-73-108 (5)(a)(b)(c), C.R.S.

2.4.2 Job Attachment to an Employer. - A claimant is considered to be job-attached and is presumed to be following a course of action reasonably designed to result in prompt reemployment in suitable work, as contemplated by 8-73-107 (1)(g), C.R.S., when an understanding exists between the claimant and his or her employer that the claimant will return to his or her old job or other suitable work with such employer within the period set forth in regulation 2.4.5 and the requirements of this section 2.4 of the regulations are met. This presumption may be rebutted by competent evidence in an individual case. Job attachment to an employer shall commence with the week in which the claimant last separated from said employer.

2.4.3 Job Attachment by Virtue of Union Hiring Hall. - A claimant who is properly registered for employment through a union hiring hall is presumed to be following a course of action reasonably designed to result in prompt reemployment in suitable work, as contemplated by 8-73-107 (1)(g), C.R.S., and shall be considered job-attached to the extent permitted by regulation 2.4.5. This presumption may be rebutted by competent evidence in an individual case. Job attachment shall commence with the effective date of a valid initial, additional, or reopened claim filing.

2.4.4 Job Attachment by Promise of New Work. - A claimant who has an assurance of new work shall be considered job-attached to the extent permitted by regulation 2.4.5, and such period shall commence with the week in which the offer of new work was accepted. "New work" for the purposes of this section 2.4 shall mean a job offer that has no known termination date made by any employer other than the employer from whom the claimant most recently separated.

2.4.5 Duration of Job Attachment. - Claimants who are job-attached to an employer or who are job-attached by virtue of a union hiring hall arrangement will be presumed to meet the requirements of 8-73-107 (1)(g), C.R.S., for a period of up to sixteen weeks unless it can be shown that said job-attached status is not reasonably designed to result in prompt reemployment in suitable work. Job-attached status may be granted for a period of no more than two weeks to a claimant with a promise of new work.

- .1 the division, at it's discretion during times of economic recession, may extend the period of job attachment for up to twenty-six weeks for claimants who are job-attached to an employer or who are job-attached by virtue of a union hiring hall arrangement.

2.4.6 Duties of Claimant. - During the period of job attachment set forth in regulation 2.4.5, a job-attached claimant must be able to work and be available for suitable work with the employer to whom he or she is job-attached or be able to work and be available for referral to a job by his or her hiring hall. The claimant shall not be required to search for work elsewhere and shall, by means of his or her job attachment, be presumed to have met these requirements. Nothing in this regulation 2.4 shall permit a claimant to refuse an offer of suitable work as defined in 8-73-108 (5)(b), C.R.S.

2.4.7 Expiration of Job Attachment. - When the job-attached period set forth in regulation 2.4.5 has expired or when a claimant's understanding with the employer as provided in regulation 2.4.2 no longer exists or when a claimant's registration with a union hiring hall ceases or when an offer of new work is withdrawn or if, in the judgement of the division, job-attached status is not reasonably designed to result in prompt reemployment in suitable work, the claimant must comply with the provisions of 8-73-107, C.R.S., or his or her compensability shall cease.

2.5 SELF-EMPLOYMENT

2.5.1 Statutory Reference: 8-73-107, C.R.S.

2.5.2 Effect of Self-Employment Activities. A claimant may be disqualified from receipt of benefits due to self-employment activities where such activities result in the claimant restricting his or her availability for work or limiting his or her search for work.

2.5.3 Self-Employment Activities. For the purposes of this section, "self-employment activities" shall include all activities of a claimant that relate to the formulation, development, or operation of any business or income-producing undertaking.

2.5.4 Matters to be Considered. In determining whether or not a claimant's availability for suitable work is restricted or a claimant's search for work is limited by means of his or her self-employment activities, the division may consider, in addition to other relevant factors, the following:

- .1 The nature of the claimant's self-employment activities;
- .2 The nature of the claimant's previous employment;
- .3 The amount of time required for the claimant's self-employment activities;
- .4 Whether the claimant's self-employment activities occur at the normal time the claimant would be employed or seeking employment;
- .5 Whether the nature of the claimant's self-employment activities require regular hours of work;
- .6 Whether the nature of the claimant's previous employment required regular hours of work;
- .7 The extent to which the claimant's self-employment activities coexisted with the claimant's previous employment;
- .8 The extent of the claimant's financial commitment to the self-employment activities;
- .9 Whether the claimant has rented or purchased space to be used for self-employment activities;
- .10 Whether the claimant has arranged for or obtained a business telephone;
- .11 Whether the claimant has obtained any required licenses or permits;
- .12 Whether the claimant has advertised for customers;
- .13 The extent to which the claimant's self-employment activities required him or her to supervise or direct other individuals.

2.5.5 All Requirements Must be Met. Notwithstanding any provision of this section, a self-employed claimant, in order to qualify for benefits, must satisfy all of the eligibility conditions enumerated in 8-73-107, C.R.S.

2.5.6 Reporting Earnings. A self-employed claimant must report all monies earned during the week(s) for which benefits are claimed regardless of whether or not such earnings have been received. Where earnings have not been received, the claimant must provide an estimate of monies earned and, thereafter, must report actual earnings, when received, if the estimate was incorrect.

2.6 APPROVED-TRAINING COURSE

2.6.1 Statutory Reference: 8-73-107 (4), C.R.S.

2.6.2 Approved Training. The claimant must produce evidence of continued attendance and satisfactory progress in an approved-training course when requested by the division. In determining whether or not a training course will be approved for an individual claiming benefits under the provisions of 8-73-107 (4), C.R.S., the division shall consider, among other factors, the following:

- .1 Whether the claimant's skills are such that reasonable employment opportunities do not exist or have substantially diminished in the labor-market area of the claimant to the extent that, in the judgement of the division, the individual has little or no prospect of obtaining suitable employment;
- .2 Whether the claimant possesses the qualifications and aptitudes to successfully complete the program of training;
- .3 Whether there is a reasonable expectation that the claimant will complete the training course;
- .4 Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities for the claimant; and
- .5 Whether the training course is reasonably designed to result in the claimant's prompt reemployment in suitable work.

2.6.3 Effect of Participation in Approved Training. With respect to any week in which a claimant is participating in a training program with the approval of the division and meets the requirements of this section, he or she shall not be denied benefits for the reason that he or she is not actively searching for work or that he or she has failed to apply for or refused to accept suitable work.

2.6.4 Enhanced Unemployment Insurance Compensation Benefits. (Repealed)

2.6.5 Approved Training for Industries In Crisis. In the event of a localized or state-wide downturn in a particular industry, such as unexpected mass layoffs or other triggers that threaten the economic stability of the regional or state economy, the division may, at the discretion of the division director, waive consideration of any of the factors set forth in regulation 2.6.2.

2.7 (RESERVED)

2.8 ELIGIBILITY REQUIREMENTS

2.8.1 Statutory References: - 8-73-107, 8-73-108 (5)(a)(b)(c), and 8-73-113, C.R.S.

2.8.2 Able to Work. - In general, a claimant must be physically and mentally capable of performing the usual duties of his or her customary occupation or the usual duties of other suitable work for which he or she is reasonably qualified. The burden of establishing ability to work is on the claimant. However, there shall be no presumption that the claimant is not able to work. In determining whether the claimant is able to work, the division shall consider the relevant facts and circumstances of the claimant's individual situation.

- .1 The division may request the claimant to furnish, at his or her own expense, a competent written statement from a licensed practicing physician or a licensed mental-health-care professional when the claimant's ability to work is in doubt.
- .2 The claimant must be able to work all shifts that are customary for his or her usual occupation or be able to perform other suitable work for which he or she is reasonably qualified.
- .3 A part-time worker's ability to work shall be determined in accordance with regulation 2.2.
- .4 A claimant engaged in self-employment activities shall have his or her ability to work determined in accordance with regulation 2.5.

2.8.3 Available for Work. - In general, a claimant shall be considered available for work only if he or she is ready and willing to accept suitable work. There must be no restrictions, either self-imposed or created by other circumstances, that prevent accepting suitable work. The claimant must accept referral to suitable work or accept an offer of suitable work to avoid being disqualified from receiving benefits in accordance with 8-73-108 (5), C.R.S.

- .1 **Labor-Market Area.** A claimant must offer his or her services without restriction to the labor-market area to be considered available for work. For the purposes of this regulation 2.8, the term "labor-market area" shall mean the geographic area where the claimant can reasonably be expected to seek and find employment.
- .2 **Absence From State.** A claimant who is temporarily absent from the state for reasons other than to seek work pursuant to regulation 2.1.8 is presumed to be not available for work. This presumption may be rebutted by competent evidence in an individual case.
- .3 **Change of Labor-Market Area.** A claimant who relocates to a new labor-market area may be required to expand his or her work search to include other occupations for which he or she is reasonably qualified when, in the opinion of the division, opportunities for securing work in his or her customary occupation are significantly limited.
- .4 **Referral to Job Opening.** A claimant who cannot be reached for referral to a job opening, after reasonable efforts to contact the person have been made, shall be considered unavailable for work unless good cause for failure to be reachable is shown. For purposes of this regulation 2.8, good cause shall have the meaning set forth in regulation 12.1.8.
- .5 **Length of Unemployment.** As a claimant's duration of unemployment lengthens, prospects for obtaining employment in his or her customary occupation or other work in a reasonable time may change. Therefore, work that is unsuitable at one point in time may become suitable at another point. To be available for work, a claimant must be ready and willing to accept other work that becomes suitable as his or her prospects for customary work change. Thus, a claimant may be required to broaden the geographic area where he or she will accept work, accept counseling for possible retraining or change in occupation, or seek and accept employment at the prevailing wage in a new occupation.

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- .6 **Incarceration.** A claimant who is incarcerated and unable to accept employment under a work-release program is not available for work.
 - .7 **Seasonal Worker.** A seasonal worker who, outside the seasonal period, is not willing to accept suitable work in a nonseasonal occupation is not available for work.
 - .8 **Self-Employment.** A claimant engaged in self-employment activities shall have his or her availability determined in accordance with regulation 2.5.
 - .9 **Time or Shift Restriction.** A claimant who is unwilling to work the hours of the day or the days of the week that are customary for his or her usual occupation or other suitable work for which he or she is reasonably qualified is not available for work.
 - .10 **Transportation.** Transportation is the responsibility of the worker. A claimant who is unable to seek or accept suitable work in the labor-market area due to a lack of transportation is not available for work.
 - .11 **Dependent Care.** A claimant who elects not to seek or accept suitable work because he or she must care for a dependent person is not available for work.
 - .12 **School or Training.** Except as provided by 8-73-107 (4)(a) and 8-73-113, C.R.S., and regulation 2.6, a claimant who elects not to seek or accept suitable work because of participation in or attendance at school or training is not available for work.
 - .13 **Wage Restriction.** A claimant who is unwilling to accept the prevailing wage for the type of work he or she is seeking in the labor-market area is not available for work.
 - .14 **Part-Time Worker.** A part-time worker's availability for work shall be determined in accordance with regulation 2.2.
- 2.8.4 Actively Seeking Work.** A claimant must make a systematic and sustained effort to actively seek suitable work unless otherwise relieved of this requirement when he or she is participating in approved training, is job attached, has a qualifying job separation as a surviving military spouse, or has limited job opportunities pursuant to articles 70 to 82 of title 8, C.R.S., or the regulations. A claimant who limits his or her work search solely to positions that are not available in the labor-market area or to positions for which he or she is not reasonably qualified shall not be considered actively seeking suitable work.
- .1 **Systematic and Sustained Effort.** A *systematic and sustained effort* means a high level of job-search activity throughout the given week. Such activity should be commensurate with the number of employers or employment opportunities that exist in the labor market and that reasonably apply to the claimant as determined in accordance with 2.8.4.2. Such activity shall include An independent search for work that results in contacting people who have the authority to hire or following the hiring procedures required by a prospective employer, as well as referrals offered by organized public and private agencies, such as a state workforce center or a private placement office or hiring hall.
 - .2 **Number of Contacts.** The number of employers a claimant must contact each week in order to be considered actively seeking work shall be determined by the division. In determining the adequacy of work search in terms of the number of job contacts required, the division, or the division's designee, which may include, but not be limited to, a workforce center, shall consider, but not be limited to, a consideration of the employment opportunities in the claimant's labor market area, the qualifications of the claimant, and the normal practices and customary methods for obtaining work. Failure to make the required number of job contacts may result in a disallowance of benefits.
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- .3 Record of Job Contacts.** A claimant who is required to make an active search for work must maintain a written record of weekly job contacts. This record must contain tangible evidence of an active search for work. The claimant must provide a copy of said record, or any portion thereof, to the division at its request, and the claimant must keep this record available for inspection by the division for a period of two years after the date the claimant filed the initial claim for unemployment insurance benefits. Failure by a claimant to provide this record or to include in that record tangible evidence of a systematic and sustained work search shall result in a determination that the claimant has not met the requirement to actively seek work pursuant to 8-73-107 (1)(g), C.R.S., except that such a failure may be permitted if it is determined that the failure was due to circumstances outside the claimant's control.
- .1 Tangible Evidence.** *Tangible evidence*, for the purposes of this section, shall mean a written record that can be verified and includes the action taken; method of applying for work; type of work sought; the name of the employer or person who was contacted; a telephone number, e-mail address, or other reliable contact information for the employer or person contacted; and the outcome of the contact.
- .4 Warning Letter.** The Director or the Director's designee, at his or her discretion, may elect to issue a warning letter to any claimant who has failed to meet the work-search requirements of the law. This authority shall, in no way, limit the authority of the Division to issue a disallowance of benefits when it is determined that a claimant has not met the work-search requirements of the law. If a claimant has been issued a warning letter for failing to meet the work-search requirements of the law and is again determined to have failed to meet the requirements, another warning letter shall not be issued. Instead, a disallowance of benefits shall be issued for the weeks in which the second and any subsequent failure occurred unless the circumstances of that failure were outside the claimant's control as provided under regulation 2.8.4.3.
- .1 Penalties.** If a claimant is issued a warning letter, pursuant to this section, it shall be considered in determining whether a claimant made a false representation or willfully failed to disclose a material fact for the purpose of determining whether monetary or weekly penalties should be imposed pursuant to 8-81-101 (4)(a)(II), C.R.S.
- .5 Seasonal Worker.** A claimant who is seasonally employed is not relieved of the responsibility to seek work.
- .6 Incarcerated Worker.** A claimant who is incarcerated and who is unable to seek work is not actively seeking work.
- .7 Limited Job Opportunities.** If, due to economic conditions within the labor-market area, the division determines that any effort to search for work would be fruitless for the claimant and burdensome to employers, then registering for work as directed by the division shall constitute an active search for work.
- .8 Part-Time Worker.** Whether a part-time worker is actively seeking work shall be determined in accordance with regulation 2.2.
- .9 Self-Employment.** Whether an individual engaged in self-employment activities is actively seeking work shall be determined in accordance with regulation 2.5.

- .10 Qualifying Job Separation as a Surviving Military Spouse.** The division shall waive the requirement to actively seek work for a claimant who relocates to a new place of residence because of the death of a spouse in combat, provided that the claimant is available for suitable work and that the individual claimant's spouse at the time of death had been a member of the United States Armed Forces on active duty as defined in 10 U.S.C. Sec. 101(d)(1), active guard and reserve duty as defined in 10 U.S.C. Sec. 101(d)(6), or title 10 or 32 of the United States Code.
- .4a Program for specified groups.** At the discretion of the director of the Division of Unemployment Insurance, specified groups of job seekers may participate in dedicated services at their workforce center:
- .1 Participation in the identified program shall be voluntary.
 - .2 Participants shall be allowed to replace employer contacts as specified in regulation 2.8.4.1 with other activity designed to help them return to work. Such activity shall be directed by workforce-center staff and shall include, but not be not limited to, assistance with resume writing and job-interview skills, and any other workforce activity aimed at shortening the participants' period of unemployment.
 - .3 The division shall deem acceptable for systematic and sustained effort any activity outlined in 2.8.4a.2 in which participants engage.
 - .4 For work-search activity as outlined in 2.8.4.4a.2, *tangible evidence* shall mean a written record that can be verified and that includes: the date of the activity; the location of the activity; the provider of the activity; the telephone number, e-mail address, or other reliable contact information of the provider of the activity.
 - .5 In cooperation with staff in workforce centers, the Division shall encourage participants to continue their sustained efforts to prepare for, seek, and find employment.
- 2.8.5 Reemployment Services.** - A claimant who fails to participate in reemployment services, after having been determined likely to exhaust regular benefits and to need such services pursuant to a profiling system established by the director of the division, shall be ineligible to receive benefits with respect to any week unless it is determined that:
- .1 The individual has completed such services; or
 - .2 There is justifiable cause for the claimant's failure to participate in such services.
- 2.9 DISQUALIFYING PAYMENTS**
- 2.9.1 Statutory References:** 8-73-102 (4), 8-73-107 (4), and 8-73-110 (1), C.R.S.
- 2.9.2 Gross Wages/Earnings Reportable During a Week of Unemployment.** For the purposes of determining weekly benefits, "wages/earnings" is defined as any income or remuneration received in exchange for services performed, including amounts that have been deducted under a plan for tax exemption or deferral.
- .1 Wages/earnings do not include payments for reimbursements for out-of-pocket expenses by volunteer workers.

- .2 Wages/earnings do not include income derived from investment-interest payments, dividend payments, or rent receipts from rental property, except if the income is earned through a business owned or operated by the individual requesting payment for a week of unemployment.

PART III WAGES

3.1 REMUNERATION PAYABLE IN ANY MEDIUM OTHER THAN CASH

3.1.1 **Statutory References:** 8-70-141, 8-70-142, 8-73-102, and 8-76-102 (2), C.R.S.

3.1.2 **Value of Remuneration.** If board, lodging, payments in kind, and/or other benefits are given as compensation for services performed by employees, and where a cash value of such benefits is agreed upon in a contract of hire or otherwise, the amounts agreed upon shall be deemed a reasonable value of such benefits. The division may, after investigation, determine in individual cases the amounts to be included as reasonable value of all such remuneration payable in any medium other than cash for the purpose of computing contributions due under the act.

3.2 TIPS, GRATUITIES, AND SERVICE CHARGES

3.2.1 **Statutory References:** 8-70-141, 8-73-102, and 8-76-102 (1), C.R.S.

3.2.2 **Tips, Gratuities, and Service Charges as Wages.** Tips, gratuities, and service charges shall be considered to be wages for the purposes of the act when the employer exercises significant control over the amount and distribution of money received by an employee as a tip, gratuity, or service charge.

3.2.3 **Significant Control.** An employer is considered to have significant control over tips, gratuities, or service charges when they are collected by the employer and then redistributed to employees.

3.2.4 **Minimum-Wage Requirements.** Notwithstanding any other provision of this section, any tips, gratuities, and service charges that are used by the employer in order to conform to the minimum-wage requirements of federal or state law shall be deemed to be wages for the purposes of the act, to the extent of such use.

3.2.5 **Use of Credit Card.** For the purposes of this section, the inclusion, for the convenience of the customer, of a tip or gratuity in an amount charged by a customer through the use of a credit card shall not, by itself, be deemed to constitute significant control.

3.2.6 **Requirement to Report Tips.** For the purposes of this section, a requirement by an employer that an employee report or account for tips and gratuities shall not, by itself, be deemed to constitute significant control.

3.2.7 **Tips Reported to Employer.** In addition to the foregoing provisions of this section, on and after January 1, 1986, wages shall also include tips that are received while performing services that constitute employment and that are made known to the employer through a written statement furnished by the employee.

PART IV JOB SEPARATIONS

4.1 SEPARATIONS RELATED TO RELOCATION

4.1.1 STATUTORY REFERENCE: 8-73-108 (4), C.R.S

4.1.2 SPOUSE'S EMPLOYMENT LOCATION CHANGED. If a claimant separates from his or her employment due to a change in location of the employment of the claimant's spouse, the Division shall consider in determining benefit entitlement whether the claimant has demonstrated all the required elements of 8-73-108 (4)(s) or 8-73-108 (4)(u), C.R.S. The Division may, at its discretion, request from the claimant additional documentation related to any or all of the following:

- .1 The claimant has established a spousal relationship, as defined under Colorado law, with the individual whose employment necessitates a new place of residence.
- .2 The claimant has established that his or her spouse secured employment prior to the claimant separating from his or her job.
- .3 The claimant has established that the change in his or her spouse's employment requires a new place of residence.
- .4 The claimant has established that it is impractical to commute to his or her place of employment from the new place of residence.
- .5 The claimant has established that, upon arrival to the new location, he or she is available for suitable work as described in section 8-73-108(5)(b) C.R.S.

4.2 Separations Related To Domestic Violence

4.2.1 Statutory Reference: 8-73-108 (4)(r), c.r.s

4.2.2 Domestic Violence. "Domestic violence" means an act or threatened act of violence, or any other act of aggression, abuse, coercion, or intimidation committed against the worker or a member of the worker's immediate family, as defined in § 8-73-108 (4)(r)(v), by a person with whom the worker or immediate family member is or has been involved in an intimate relationship, and that would cause a reasonable worker to believe his or her continued employment would jeopardize the safety of the worker or an immediate family member.

4.2.2.1 "Intimate relationship" means a relationship between past or present spouses, past or present unmarried couples, past or present household members, or parents of the same child, regardless of whether they have been married or have lived together.

PART V BENEFIT CHARGING

5.1 BENEFIT CHARGE-BACKS IN CASES OF TWO OR MORE EMPLOYERS

5.1.1 Statutory Reference: 8-76-103 (1), C.R.S.

5.1.2 Benefit Charge-Backs. In the event it is administratively impracticable for the division to determine the chronological order of employment because two or more employers have submitted wage reports covering the same calendar quarter, periods of employment within such calendar quarter shall be chargeable without regard to chronological order by the division in a manner determined to be fair and equitable for all affected employers. The order of charges shall stand unless an affected employer makes a timely request for redetermination pursuant to regulation 11.1.

PART VI PREMIUMS AND ASSESSMENTS

6.1 EMPLOYER PREMIUMS

6.1.1 Statutory References: 8-76-101 (1) (3), 8-76-102, 8-79-101, 8-79-102, 8-79-104, and 8-79-107, C.R.S.

6.1.2 Due Date of Premiums. Except as otherwise provided by this rule 6.1, premiums shall become due and be paid no later than the last day of the month immediately following the end of the calendar quarter for which the premiums have accrued. For purposes of this rule 6.1, payment will be considered timely if postmarked or received in person or electronically on or before the due date. If the due date of premiums falls on a Saturday, Sunday, or legal holiday, payment will be considered timely if postmarked or received in person or electronically on the next business day that is not a Saturday, Sunday, or legal holiday.

.1 Quarterly payment shall not be required when the total amount of any premiums due, including any penalties and interest accrued for an untimely or incorrect report, is less than five dollars.

6.1.3 Payment to Another Jurisdiction. An employer who has erroneously paid to another jurisdiction an amount as premiums properly payable to Colorado shall not be delinquent if premiums properly payable to Colorado are paid within thirty days of the date on which the division determines that such premiums are payable to Colorado.

6.1.4 Erroneous Rate Notice. If, as a result of an incorrect notification or computation of rate by the division, an employer is required to make an additional payment of premiums, such additional payment shall not accrue interest until thirty days after notification by the division that such additional payments are due.

6.1.5 Payments. Quarterly payments shall include all premiums with respect to wages paid for employment in all payroll periods that end within the quarter.

.1 Quarterly payment shall not be required when the total amount of any premiums due, including any penalties and interest accrued for an untimely or incorrect report, is less than five dollars.

6.1.6 First Payment of New Employer. The first premium payment of any employing unit that becomes an employer at any time during a calendar year shall become due and be paid on or before the last day of the month immediately following the calendar quarter in which such employing unit becomes an employer. Said payment shall include premiums with respect to wages paid for employment occurring on and from the first day of the calendar year through all payroll periods that end within the calendar quarter in which the employing unit becomes an employer.

6.1.7 Application of Payments on Delinquent Accounts. Whenever a delinquency exists in the account of an employer and payment is submitted to the division upon said account, the division shall apply such payment in the following order of priority:

.1 Unpaid interest assessments from federal trust fund advances, starting with the earliest quarter in which premiums are due;

.2 Unpaid nonprincipal-related bond repayment assessments, starting with the earliest quarter in which premiums are due

.3 Penalties owed, starting with the earliest quarter in which such penalty was incurred;

- .4 Interest already charged, commencing with the earliest quarter in which such interest is due;
- .5 Interest accrued on unpaid premiums as of the date of the payment, commencing with the earliest quarter in which premiums are due;
- .6 Unpaid premiums or unpaid regular unemployment insurance benefits charged, starting with the earliest quarter in which premiums or reimbursements are due.
- .7 Unpaid reimbursements for extended benefits charged, starting with the earliest quarter in which amounts are due.

6.2 ASSESSMENTS AND RECOMPUTATIONS

6.2.1 Statutory References: 8-72-101 (1), 8-72-108, 8-79-104, and 8-79-107, C.R.S.

6.2.2 Obtaining Information. If, in the judgment of the division or upon its information and knowledge, the report of wages included in an employer's premium report is incomplete or in error, the division may require a further report, examine the employer's relevant books and records, or use other reasonable measures to the extent necessary to obtain an accurate report.

6.2.3 Summary Methods. If a contributing employer is delinquent in filing a premium report within the time prescribed by the division or if a reimbursing employer whose records are needed to make a proper determination of an amount of indebtedness or other matter declines to make its records available, the division may, in its discretion:

- .1 Use the information and knowledge available to the division to estimate the amount of chargeable wages paid by a contributing employer during the premium period or periods. The amount of chargeable wages so determined shall be deemed to have been paid by the employer and shall be used to determine the annual payroll;
- .2 Assess the employer for premiums calculated on the basis of the estimated wages; and
- .3 Issue a subpoena duces tecum to compel an employer to release books and records to the division for use in obtaining the required information.

6.2.4 Notification. A contributing employer who is delinquent in filing reports or paying premiums shall be promptly notified of the assessment computed under rule 6.2.3.

6.2.5 Recomputations. Notwithstanding the provisions of rule 11.1, the division may correct errors of computation whenever such erroneous computations are found or brought to the division's attention.

6.2.6 Notice of Recomputation. Every interested party shall be promptly notified of any recomputation made hereunder that affects an employer's liability for premiums.

6.2.7 Recomputation Not a Redetermination. An initial recomputation issued hereunder shall not be deemed to be a redetermination decision under rule 11.1.

6.2.8 Redetermination Rights. Assessments and recomputations made hereunder are subject to redetermination pursuant to the provisions of rule 11.1.

PART VII EMPLOYER RECORDS AND REPORTS

7.1 RECORDS

7.1.1 Statutory Reference: 8-72-107(1), C.R.S.

7.1.2 Work Records. Each employing unit shall keep true and accurate work records in accordance with the requirements of this section.

7.1.3 Payroll Information. For each payroll period, the employing unit's records shall show:

- .1 Beginning and ending dates.
- .2 Total wages payable for employment during such period and the date on which such wages were paid.
- .3 The date in each calendar week on which the largest number of workers was employed and the number of such workers.
- .4 A reporting pay period of not to exceed one month, if any established payroll period be longer than one month.

7.1.4 Employee Information. For each worker, the employing unit's records shall show:

- .1 Name.
- .2 State of residence.
- .3 Social security account number. If a worker has no account number, the employer shall require the worker to produce a receipt of application therefor within seven days of entering upon employment.
- .4 Date of hire, rehire, or return to work after temporary layoff.
- .5 Date and reason separated from employment.
- .6 State or states where services are performed.
- .7 If services are performed outside of Colorado, the worker's base of operations, and, if there is no base of operations, then the place from which such services are directed or controlled.
- .8 If such worker is paid:
 - .1 On a salary basis, the wage rate and period covered.
 - .2 On a fixed hourly basis, the hourly rate and the customary scheduled days per week prevailing in the establishment for the occupation.
 - .3 On a fixed daily basis, the daily rate and the customary scheduled days per week in the establishment for the occupation.
 - .4 On a piece rate or other variable pay basis, the method by which the wages are computed.

- .5 By tips, gratuities, or service charges as defined in regulation 3.2, whether in whole or in part.
- .9 If, during any payroll period, such worker shall work less than his or her customary full-time hours:
 - .1 The specific amount of time lost; and
 - .2 The specific reason or reasons, including his or her nonavailability for work, and, if there be more than one reason, the amount of time attributable to each.
- .10 Wages paid during each payroll period and the date of payment thereof, with separate entries for:
 - .1 Money wages;
 - .2 The reasonable cash value of wages paid in any medium other than money as defined in regulation 3.1;
 - .3 Amounts paid to a worker that exceed travel and other business expenses actually incurred or accounted for; and
 - .4 Tips, gratuities, and service charges that meet the requirements of regulation 3.2.

7.2 REPORTS

7.2.1 Statutory References: 8-70-103 (17), 8-72-101 (1), 8-73-107 (1) (h), 8-74-102 (1), 8-76-104 (3)(g), 8-76-106 (4), 8-79-103 (1), and 8-79-104, C.R.S.

7.2.2 Duty to Submit Reports. Each employing unit shall make such reports as required by the division using such reporting methods as the division allows.

7.2.3 Social Security Number and Worker Name. An employer shall include a worker's social security number and name in all reports required by the division with respect to such worker. If the worker has no social security number, the employer shall report the date of issue of the application receipt therefor, its termination date, the address of the issuing Social Security Administration office, and the name and address of the worker as shown on the receipt.

7.2.4 Unemployment Insurance Quarterly Reports. Every employer subject to the act shall furnish to the division a quarterly report of total covered wages paid and premiums owed and a report of covered wages paid to all workers in his or her employ except that no such reports shall be required with respect to an employee of a state or local agency performing intelligence or counterintelligence functions if the head of such agency has determined that filing such reports could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission. These reports are due and any premiums due thereon are payable no later than the last day of the month immediately following the end of each calendar quarter, regardless of whether covered wages were paid during such quarter, and shall be filed in accordance with the methods specified in rule 7.2.5. The quarterly reports will be considered timely if postmarked or received in person or electronically on or before the due date. If the due date for filing timely quarterly reports falls on a Saturday, Sunday, or legal holiday, the reports due under this paragraph will be considered timely if postmarked or received in person or electronically on the next business day that is not a Saturday, Sunday, or legal holiday. Any report due under these provisions that is postmarked or received after the due date will bear penalties as provided in 8-79-104 (1), C.R.S., until properly filed on prescribed division forms using division-approved reporting methods.

- 7.2.5 Reporting Methods.** At the discretion of the division, quarterly reports of wages paid to workers may be submitted in person, by mail, by facsimile machine, OR by division-approved electronic means.
- 7.2.6 Request for Report.** The division may request a wage and/or separation report concerning a particular worker using any of the communication methods specified in rule 1.9 for the purpose of confirming a report previously submitted or obtaining information necessary to enable the division to make a determination of benefit rights. Such report shall be furnished to the division in person, by mail, by telephone, or by division-approved electronic means and shall be received by the division within twelve calendar days after the date on which the division requests such information, except that the division may accept information out of time if it determines good cause exists for the untimely action, as referenced in 7.2.8 or 12.1.8. In the event that the requested report is received late but before the initial adjudication of the matter for which the report was requested, there is a presumptive showing of good cause.
- 7.2.7 Cessation or Transfer of Business.** Any employer that ceases doing business, that in any manner transfers all or part of the trade and business, or that changes the trade name or address of said business shall:
- .1 Within ten days thereof, give notice in writing to the division in accordance with rule 1.3.11; and
 - .2 In accordance with rule 1.3.11 and rule 7.2.4, file with the division a final Employer's Unemployment Insurance Quarterly Report and Report of Worker's Wages when due for the calendar quarter in which the change or cessation occurred and for any quarter for which a report was due but not previously filed.
- 7.2.8 Loss of Right to Protest.** An employer who fails to comply with the provisions of the preceding paragraphs of this section 7.2 without good cause as referenced in 7.2.6 or 12.1.8 shall be deemed not to be an interested party as defined in 8-70-103 (17) and 8-73-107 (1)(h), C.R.S., and shall be barred from protesting either:
- .1 The payment of benefits to workers for whom wage and separation information was not furnished within the required time; or
 - .2 The charging of the employer's account for experience-rating purposes with benefits paid such workers or the amount due as payments in lieu of contributions for benefits paid such workers.
- 7.2.9 Incorrect or Incomplete Report.** An incorrect or incomplete report not in substantial compliance with the provisions of this part VII of the rules may, at the division's discretion, be considered in the same manner and subject to the same penalties and loss of rights as if the employer had failed to submit a report. For the purposes of this paragraph, the Report of Worker's Wages required by rule 7.2.4 must include the report period, Colorado employer account number assigned by the division, employer's current name and address, worker's social security number, worker's name and total quarterly covered wages paid.
- 7.2.10 Labor Dispute.** When workers become unemployed or separated from an employer because of a labor dispute, the employer shall furnish the division with such relevant information about each worker as the division may require.

7.2.11 Penalties Remain in Force. Nothing contained in these rules shall be construed as reason to relieve an employer from:

- .1 The responsibility for the submission of quarterly premium reports or from the liability for payment of penalties incurred for failure to timely submit such reports, as provided by 8-79-104 (1), C.R.S., or
- .2 The responsibility to provide wage and/or separation reports or the liability for the payment of penalties incurred for failure to timely submit such information as provided by 8-73-107(1)(h), C.R.S., unless
- .3 The division finds that the employer had good cause, as defined at rule 12.1.8, for failing to timely submit required documents.

7.3 POSTING NOTICES TO WORKERS

7.3.1 Statutory References: 8-72-101(1) and 8-74-101(2), C.R.S.

7.3.2 Posting Notices. Every employer shall post and maintain notices that inform employees that the employer is subject to the act and has been so registered by the division.

7.3.3 Form and Design. Such notices shall be of such form and design and posted in such numbers as the division may determine to be necessary.

7.3.4 Post in Work Locations. Such notices shall be conspicuously posted at or near work locations.

7.3.5 Assignment of Account Number. An employer shall not be required to post notices until an employer's account number has been assigned by the division.

PART VIII EMPLOYER BOND REQUIREMENTS

8.1 BONDING REQUIREMENTS

8.1.1 Statutory Reference: 8-70-114 and 8-76-110, C.R.S.

8.1.2 Bond Requirements. A surety bond, deposit of money, or securities, specified in 8-70-114 (2)(g)(III) AND 8-76-110 (4), C.R.S., shall be required only if the amount of the bond, deposit of money, or securities computed as provided in said sections is one hundred dollars or more.

8.1.3 Bond Calculation, Employee Leasing. The bond calculation required in section 8-70-114 (2)(g)(III)(a), shall be based on the total premiums assessed under the employee-leasing company's unemployment insurance account, including premiums assessed for work-site employers required to report under the employee-leasing company's account. If in the prior year, the work-site employer reported under a separate unemployment insurance account, the premiums assessed for the work-site employer in the separate account shall be included in the bond calculation for the current year.

PART IX COVERED EMPLOYMENT (RESERVED)

PART X SEASONAL INDUSTRY

10.1 SEASONAL DETERMINATIONS

10.1.1 Statutory References: 8-73-104(1), 8-73-106, and 8-76-113, C.R.S.

10.1.2 Seasonal Periods Considered. As used in 8-73-106(1), C.R.S., the words “a regularly recurring period or periods of less than twenty-six weeks in a calendar year” are deemed to include periods in those years during which an employing unit was not subject to the provisions of the act, or during which a predecessor employer was subject to the act, and records of such predecessor are available to support such periods.

10.1.3 Seasonal Operation. No industry or functionally distinct occupation within an industry shall be deemed a seasonal industry as defined in 8-73-106 (1), C.R.S., unless the employer certifies in the application for seasonal determination required by regulation 10.1.5 that the employer will fulfill the requirements set forth in regulation 10.1.4 and certifies such other information as may be required by the division to determine eligibility for designation as a seasonal employer under this part X of the regulations.

10.1.4 Seasonal Employer. An employer shall be determined to be a seasonal employer as to a particular industry or functionally-distinct occupation within an industry only if:

- .1 The employer customarily employs workers in such industry or functionally-distinct occupation only during a regularly-recurring period or period of less than twenty-six weeks in a calendar year, and
- .2 The employer does not employ more than twenty-five percent of the total number of workers in such functionally-distinct occupation outside the seasonal period that were employed in such occupation during the previous seasonal period, and
- .3 The employer does not employ any workers in such functionally-distinct occupation for a period of forty-five consecutive days following the seasonal period. For the purposes of this part X of the regulations, no employment shall be determined to be a functionally-distinct occupation unless its assigned duties or activities, as a whole, are identifiably distinct under the usual and customary practice of the industry.

10.1.5 Application for Determination. An employer who wishes designation as a seasonal employer or determination or redetermination of a seasonal period or periods shall make application with the division upon such forms and using such filing methods as may be prescribed by the division.

10.1.6 Notice of Application. The division shall require the employer to post a Notice of Application for Seasonal Status on such forms as the division may require and shall require the employer to notify the unions representing any of its workers that an application for seasonal status has been filed.

10.1.7 Seasonal Determination. Upon review of the matters set forth in the application and such other information as it may require, the division shall issue a determination as to the employer's seasonal status, the seasonal period, the functionally-distinct occupations determined to be seasonal, and the functionally-distinct occupations determined to be nonseasonal.

10.1.8 Seasonal Workers. A worker may not be determined to be a seasonal worker if:

- .1 The worker performs services for a seasonal employer outside the employer's designated seasonal period or periods; or

- .2 The worker performs services for a seasonal employer for twenty-six weeks or more in a calendar year.

10.1.9 Appeal From Determination. Any employer who wishes to protest a determination made under the provisions of this part X of the regulations shall file a notice of appeal with the division. Such notice of appeal must be received by the division within twenty calendar days after the date the seasonal determination was mailed. A hearing may be obtained in accordance with 8-76-113, C.R.S., and regulation 11.2.

10.1.10 Notice of Operation Outside Season. Each seasonal employer shall give written notice, in accordance with regulation 1.3.11, to the division within thirty days when the seasonal industry or functionally-distinct occupation is operated for twenty-six weeks or more in a calendar year and, for a functionally-distinct occupation, when more than twenty-five percent of the total number of workers who were employed in any such functionally-distinct occupation during the designated season are employed in such occupation outside the seasonal period or there is not a forty-five consecutive-day period outside the seasonal period, during which no workers are employed in such functionally-distinct occupation.

10.1.11 Annual Report. In addition to the notice required in regulation 10.1.10, every employer who has been designated a seasonal employer must file a written report on prescribed forms and using such filing methods as may be prescribed by the division on or before the last day of February, which report shall inform the division of the beginning and ending dates of the previous calendar year's seasonal operations and such other information as may be required by the division to show compliance with this part X of the regulations.

10.1.12 Notification. Each seasonal employer shall notify each seasonal worker in writing at the time of hire of the worker's seasonal status and the beginning and ending dates of the seasonal period for which the worker is to be employed.

10.1.13 Loss of Seasonal Status. If an employer, subsequent to the date on which he or she was designated as a seasonal employer, fails to fulfill the requirements of regulation 10.1.4 or fails, without good cause, to comply with the reporting or notification requirements of this part X of the regulations during a calendar year, such employer shall lose his or her seasonal status. Any determination by the division that an employer has lost his or her seasonal status shall be made in writing and provided to the employer in accordance with regulation 1.3.11.1. Said determination shall be subject to appeal pursuant to regulation 10.1.9.

10.1.14 Reinstatement of Seasonal Status.

- .1 An employer who has lost his or her designation as a seasonal employer, and who wishes reinstatement as such, may make application with the division for reinstatement in any calendar year subsequent to the year in which the employer lost the designation as a seasonal employer, provided such employer has met the requirements of regulation 10.1.4 in the calendar year immediately preceding application for reinstatement.
- .2 A worker who has performed services for a seasonal employer outside the employer's designated seasonal period or periods, and thereby lost his or her status as a seasonal worker, shall regain his or her status as a seasonal worker if he or she is not thereafter employed by such employer between any two following designated seasonal periods and he or she is subsequently reemployed by the employer in a seasonal industry or occupation.

10.1.15 Filing Methods. For purposes of this part X of the regulations, applications, notices, and reports may be made in person, by mail, by facsimile machine, by division-approved electronic means, or by a division interactive voice response system.

PART XI REDETERMINATIONS AND APPEALS

11.1 REDETERMINATIONS

11.1.1 Statutory References: 8-73-102 (3), 8-74-102 (2), 8-76-103 (4), 8-76-110 (3) (e), and 8-76-113, C.R.S.

11.1.2 Redetermination of Assessments. An employer who wishes to protest a notice of assessment of premiums shall have fifteen calendar days after the date the notification was provided in which to file a written request for redetermination of said assessment or to file a correct report of chargeable wages paid during the premium period or periods.

11.1.2 Redetermination of Assessments. An employer who wishes to protest a notice of assessment of premiums shall file a written request for redetermination of said assessment or to file a correct report of chargeable wages paid during the premium period or periods. The written request for redetermination must be received by the Division within twenty calendar days of the date the assessment was issued.

11.1.3 Redetermination of Quarterly Statement of Benefits Charged to Employer's Account. An employer who wishes to protest a quarterly statement of benefits charged to his or her account shall have sixty calendar days after the date notification was provided to file a written notice for redetermination of the accuracy of the statement.

11.1.4 Redetermination of Premium Rates. An employer who wishes to protest a notice of his or her premium rate shall file a written request for redetermination of the premium rate. The written request for redetermination must be received by the Division within twenty calendar days of the date the rate notice was issued.

11.1.5 Redetermination of Recomputations. Any interested party who wishes to protest a recomputation made by the division shall file a written request for redetermination of the matters corrected. The written request for redetermination must be received by the Division within twenty calendar days of the date the recomputation was issued.

11.1.6 Monetary Determinations. Any interested party who wishes to protest a monetary determination made by the division on a claim for benefits shall file a written request for redetermination with the division within the benefit year or extended-benefit period for such claim.

11.1.7 Reimbursement Bill. Any employer who wishes to protest a bill for payments in lieu of premiums shall file a written request for redetermination of the amount due. The written request for redetermination must be received by the Division within twenty calendar days of the date the bill was issued.

11.1.8 Timeliness of Request for Review. Any determination made by the division that is subject to redetermination under this section shall be deemed final, and any information contained in any document or notice issued by the division that is subject to redetermination under this section shall be deemed correct unless the party files a timely request for redetermination in accordance with this regulation or establishes to the satisfaction of the division that said party had good cause for the failure to do so. Good cause for failure to file a timely request for redetermination shall have the meaning set forth in regulation 12.1.8.

11.1.9 Form of Request. Each request for redetermination filed pursuant to this section shall specify in detail the errors, omissions, or other grounds upon which the party relies.

11.1.10 Redetermination Decision. Upon receipt of a request for redetermination, the division shall review the request, investigate the matters specified, and give the parties notice of its redetermination decision in accordance with regulation 1.3.11.1.

11.1.11 Appeals From Redeterminations. Any party who wishes to appeal from a redetermination decision shall file a written notice of appeal with the division in accordance with regulation 11.2. Such notice of appeal must be received by the division within twenty calendar days of the date the redetermination decision was mailed. Appeals shall be filed and heard pursuant to 8-74-103 to 8-74-109 and 8-76-113, C.R.S., and regulation 11.2.

11.1.12 Benefit Claims Not Covered. Except for monetary eligibility questions subject to redetermination pursuant to regulation 11.1.6, this regulation 11.1 does not authorize the adjudication in the redetermination process of the merits of claims for benefits, which are subject to the appeal process established in 8-74-101 to 8-74-109, C.R.S., and regulation 11.2.

11.1.13 Limitation on Review. Review and redetermination by the division under this section shall be limited to the matters covered by the document protested. No protest by an employer under rule 11.1.4 of a notice of the employer's premium rate shall permit inquiry into the validity of any assessment of premiums subject to review and redetermination under rule 11.1.2 nor of any benefit charge to the employer's account subject to review and redetermination under rule 11.1.3, unless the employer has first protested the assessment or charge pursuant to rules 11.1.2 or 11.1.3.

11.1.14 Written Notices, Reports, and Requests. For purposes of this regulation 11.1, written notices, reports, and requests shall have the meaning set forth in regulation 1.3.11.1.

11.2 APPEALS PROCEDURE

11.2.1 Statutory References: 8-72-108, 8-74-101 to 8-74-109, 8-76-103 (4), 8-76-113, and 8-80-102, C.R.S.

11.2.2 Scope of Section. The procedures described herein deal with appeals on disputed claims under 8-74-101, et. seq., C.R.S.; appeals from determinations of liability, determinations of coverage, and seasonality determinations under 8-76-113 (1), C.R.S.; appeals from redeterminations regarding quarterly statements of benefits charged to an employer's account under 8-76-103 (4), C.R.S.; appeals from redeterminations as to an assessment of taxes, rate of tax, recomputation of rate, or correction of any such matter under 8-76-113 (2), C.R.S.; redeterminations of reimbursement billings under 8-76-110 (3)(e), C.R.S.; appeals from redeterminations of monetary eligibility under 8-74-102 (2), C.R.S.; and appeals from eligibility determinations regarding enhanced unemployment insurance compensation under 8-73-114, C.R.S., as defined in regulation 2.6.4.

- 11.2.3 Procedure for Filing Appeals to Hearing Officer.** Appeals from decisions of a deputy on a claim for benefits, from premium liability and coverage determinations, from seasonality determinations, and from redeterminations shall be by written notice of appeal that should state specific reasons. However, any written statement expressing disagreement with a determination or the party's desire for review shall be accepted as an appeal. An appeal that does not state specific reasons must be supplemented prior to the appeal hearing and provided to the other interested parties in time to be received before the date of the hearing, as required by rule 11.2.9.4, or the specific factual issues may be excluded from the hearing. An appeal shall be filed by mail at the address designated in the notice of decision, or may be filed in person, by facsimile machine, or by division-approved electronic means. For purposes of this rule 11.2.3, the term "written" shall have the meaning set forth in rule 1.3.11. The notices of appeal in matters involving a disputed claim may also be filed with a public employment office. The division shall provide a copy of such notice of appeal to each interested party. When an appeal of a deputy's decision on a claim for benefits is received, the division shall provide to interested parties and their authorized representatives, if any, copies of relevant separation information in the claim file submitted by the parties. The division shall also provide to interested parties and their authorized representatives, if any, a copy of the form(s) used to document additional fact-finding information and to reflect those issues considered in rendering the decision.
- 11.2.4 Notice of Hearing.** Notices specifying the time and place of the hearing shall be mailed, transmitted by facsimile machine, or transmitted by electronic means to each party to the appeal at least ten calendar days before the scheduled hearing date. If participation in the hearing by telephone is permitted, the notice will inform the parties and include instructions for such participation.
- 11.2.5 Disqualification of a Hearing Officer.** Challenges to the interest of a hearing officer in an appeal scheduled to be heard by said hearing officer shall be heard and decided by that hearing officer or, in his or her discretion, referred to the panel.
- 11.2.6 Prehearing Conference.** The chief hearing officer or designee may, upon the application of any party or on his or her own motion, convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters that may simplify further proceedings.
- 11.2.7 Prehearing Discovery in Premium Cases.** In cases arising under 8-76-110 (3)(e) and 8-76-113, C.R.S., the chief hearing officer or designee may permit the parties to engage in prehearing discovery, insofar as practicable, in accordance with the Colorado Rules of Civil Procedure and, in connection therewith, shorten or extend any applicable response time.
- 11.2.8 Limitation on Discovery.** No party to an appeal proceeding may seek discovery without having first obtained an order of the chief hearing officer or designee and only upon a showing of necessity for such discovery.
- 11.2.9 Conduct of Hearing.** Hearings shall be conducted informally with as few technical requirements as possible. The hearing officer shall control the evidence taken during a hearing in a manner best suited to fully and fairly develop the relevant evidence, safeguard the rights of all parties, and ascertain the substantive rights of the parties based on the merits of the issue(s) to be decided. The appealing party shall be required to present evidence that supports the party's position on the issues raised by the appeal. Parties to the appeal may present any relevant evidence. However, the hearing officer is charged with ensuring that the record is fully developed to the extent practicable based on the evidence reasonably available at the time of the hearing, whether or not a party is represented. Therefore, the hearing officer should oversee the development of the evidence and participate in the interrogation process to the extent necessary to fully develop the record.

- .1 Parties and witnesses ordinarily may elect to participate in a hearing in person or by telephone. However, based on the individual circumstances of a case, the chief hearing officer or designee shall have the discretion to determine which method of participation, in person or by telephone, will best achieve the purposes of this rule 11.2.9 and to order the parties to participate in that manner. The in-person presence of some parties or witnesses at the hearing shall not prevent the participation of other parties or witnesses by telephone. Sworn testimony from witnesses shall be received during telephone hearings under the same rules as other hearings.
- .2 An interested party to a hearing must submit to the hearing officer any documents, subpoenaed documents, and any physical exhibits that can be reproduced that he or she intends to introduce at the hearing. Such materials must be submitted in time to ensure that the hearing officer receives them before the date of the scheduled hearing. Such party must also provide copies of all documents and physical exhibits sent to the hearing officer to any other interested party to the hearing or to that interested party's representative as shown on the hearing notice, in time to ensure the materials are received prior to the date of the scheduled hearing. Failure to timely submit such materials to the hearing officer, or to timely send the materials to the opposing party or such party's representative may result in their exclusion from the record. However, if a party has made a good faith effort to provide documents or physical exhibits in time to be received prior to the hearing, such materials shall not be excluded due to the failure of the hearing officer, the other interested party, or an interested party's representative to receive the materials. In any appropriate case where documents have been timely sent but not received in advance, an adjournment of the hearing may be permitted by the hearing officer pursuant to rule 11.2.11 unless waived on the record by both parties.
- .3 **Hearing Procedure.** Prior to taking evidence, the hearing officer shall state the issues and the order in which evidence will be received. The hearing officer also shall inform the parties of any written documents or other tangible materials that have been received and explain the procedure for introducing the materials and offering them into evidence. The sequence of receiving testimony shall be in the hearing officer's discretion. Computer records of the division concerning continued weeks claimed or payment for continued weeks claimed are admissible as evidence and may be filed in the record as evidence without formal identification if relevant to the issues raised by the appeal. The hearing officer also may consider any other relevant division file documents without a formal request or identification. However, parties shall be advised during the hearing of the division records and documents to be considered. All physical materials offered into the record shall be clearly identified and marked. Further, materials admitted shall be expressly received for the record. The hearing officer shall permit the parties to testify on their own behalf and present witnesses, and opposing parties may cross-examine each other and the others' witnesses. The hearing officer shall examine the parties and witnesses as necessary and, after notice to the parties, may hear such additional evidence as deemed necessary. All testimony shall be presented under oath and the hearing shall be timed. At the conclusion of the hearing, the hearing officer shall inform the parties of the time consumed by the hearing and the approximate cost of the preparation of the transcript of the hearing, if any, and shall instruct the parties that a decision will be promptly issued as to the issues brought forth at the hearing. The hearing officer shall also instruct the parties that such decision may be appealed and, if applicable, that the appellant must bear the cost of preparation of a transcript. The sum paid may, at a later date, be reimbursed by the panel without interest, if such appeal results in a decision favorable to the appellant. It shall also be stated to the parties that the cost of preparation of the transcript may be waived pursuant to rule 11.2.15. The hearing officer shall verify the accuracy of the addresses on file for the parties.

- .4 New Issues. Parties are entitled to advance notice of the factual issues that may be considered at a hearing. The hearing officer shall not permit an interested party to present factual issues at a hearing that have not been disclosed to the other interested party(ies) in writing, as shown by the claim file. If good cause, as set forth in rule 12.1.8, is found for a party not providing proper notice of the factual issues it intends to present, the hearing officer may adjourn the hearing. If good cause is not found, the hearing shall proceed as scheduled, and those new factual issues raised shall not be considered. In determining whether there is good cause for permitting a new factual issue, the hearing officer shall give substantial weight to an absence of prejudice to the other interested party and to the overall interests of an accurate and fair resolution. An interested party may, at the hearing, waive the requirement that it be provided with proper notice.
- .5 Based on the individual circumstances of a case, the chief hearing officer or designee shall have the discretion to determine which method of participation, in person or by telephone, will best achieve the purposes of this regulation 11.2.9 and to order the parties to participate in that manner.

11.2.10 Stipulations of Fact. With the consent of the hearing officer, parties to an appeal may stipulate to the facts in writing. Parties may also stipulate to facts on the record at the hearing before the hearing officer. The hearing officer may decide the case on the facts stipulated or, in his or her discretion, set the appeal for hearing and take such additional evidence as is deemed necessary.

11.2.11 Adjournment of Hearings. The hearing officer may grant requests for further hearing when, in his or her own best judgment, such further hearing will result in adducing all necessary evidence and be equitable to the parties.

11.2.12 Postponements of Hearings. Postponements of hearings shall not be granted without the showing of necessity therefor by the requesting party.

11.2.13 Failure to Appear.

- .1 In the event the appealing party fails to appear at the time and place scheduled for the hearing before the hearing officer for which notice has been provided, such nonappearance shall constitute a withdrawal of the appeal, and the decision that was the subject of the appeal shall become final, unless the party establishes, pursuant to part XII of the regulations, that he or she had good cause for excusing the failure to appear. Written notice that the appeal has been dismissed shall be provided to the interested parties named in the caption. If a written request that the hearing be rescheduled is made, the request must be received by the division within twenty calendar days after the date the dismissal notice was issued by the division. An untimely request that a hearing be rescheduled may be permitted by the division for good cause shown, pursuant to the procedure set forth in part XII of the regulations.

- .2 In the event that any other interested party fails to appear for a scheduled hearing, and a decision is issued by a hearing officer on the merits of the appeal, such party may request that a new hearing be scheduled either by filing a written request with the panel or filing a written appeal from the hearing officer's decision containing such request, received by the panel within twenty calendar days after the date of mailing of the hearing officer's decision, and establishing, pursuant to part XII of the regulations, that he or she had good cause for excusing the failure to appear for the appeal hearing. Such a request for a new hearing shall be filed with the panel in person, by mail, by facsimile machine or by panel-approved electronic means, or at a public employment office, the central office of the division, the office where the hearing officer is located, or by division-approved electronic means. An untimely request for a new hearing may be permitted by the panel for good cause shown, pursuant to the procedure set forth in part XII of the regulations. If it is determined that the party has shown good cause for the failure to appear, the hearing officer's decision that was issued on the merits of the appeal shall be vacated and a new hearing scheduled forthwith.
- .3 When an interested party's attorney or other designated representative appears for and participates in the scheduled hearing on the party's behalf, the party shall be deemed to have appeared for the hearing, for the purposes of this part XI of the regulations.

11.2.14 Decision of the Hearing Officer. The hearing officer shall announce, in written form, findings of fact, decision, and reasons therefor, as soon as practicable after a hearing, and a copy thereof shall be provided to all parties to the appeal.

11.2.15 Procedure for Appeal to the Panel.

- .1 An appeal from a decision of a hearing officer shall be by written notice of appeal that shall be in any form that signifies an intent to appeal and shall be filed with the panel in person, by mail, by facsimile machine or by panel-approved electronic means, or at a public employment office or the central office of the division or the office where the hearing officer is located or by division-approved electronic means. An appeal from a decision of a hearing officer shall be filed within the time limits provided by 8-74-104 (1), C.R.S., and regulation 1.8. When an appeal has been received, the appeal file and record shall be transmitted to the panel. The panel shall notify the interested parties named in the caption of the hearing officer's decision that an appeal has been filed and shall provide a copy of the written appeal to the other-named parties.

- .2 The appeal shall be filed in the manner provided by 8-74-106 (1), C.R.S. The panel shall provide each interested party or the party's representative with an audio copy of the recorded hearing testimony or, at the panel's discretion, a written transcript. Any interested party may obtain a transcript of the hearing testimony for purposes of the appeal by tendering payment for the approximate cost of the transcript. If a transcript is reasonably necessary for an interested party or the party's representative for purposes of the appeal due to a disability of the party or the representative, the party or representative may provide a written statement of disability on a form prescribed by the panel, requesting that the transcript cost be waived. In determining whether a transcript is reasonably necessary to accommodate a disability, the panel may require the requesting party to provide written documentation of the disability from a treating health-care professional. If a transcript is reasonably necessary for an interested party or the party's representative for other reasons and the party is unable to pay the cost of the transcript due to financial hardship, the party may provide a written statement of necessity and indigency on a form prescribed by the panel, requesting that such cost be waived. The appealing party shall submit the payment or completed waiver request form with the appeal. Any other interested party shall submit the payment or completed waiver request form within ten business days of the date the notice of appeal is issued. In determining whether payment would cause undue financial hardship, any relevant factors may be considered, including but not limited to the party's household income and available money and existing expenses; the approximate cost of the transcript; and whether payment of this cost would deprive the party or his or her family of basic necessities. If any interested party or representative receives a transcript of the hearing testimony, the panel shall provide a copy of the transcript to the other interested party or the party's representative.
- .3 The panel shall issue a written procedural decision on a completed waiver request, based upon the information contained in the statement of indigency, written documentation from a treating health-care professional, or other relevant information contained in the record, within fifteen calendar days after the completed prescribed request has been received by the panel.
- .4 In ruling on a waiver request, the panel shall have the discretion to request or accept additional reliable evidence by such means as shall be deemed appropriate for resolution of the issue. If the panel requests additional information, the time period for issuing a decision on the waiver request shall be tolled until the information is received by the panel or the time limit imposed for providing the information has expired, whichever occurs sooner.
- .5 The cost of the preparation of the transcript of a hearing that occurs as a result of a remand order by the panel may be assigned to be borne by the division, if expressly so assigned by panel order, but otherwise shall be borne by the appealing party as provided in these regulations.
- .6 If the payment of the approximate cost of the transcript tendered by the requesting party exceeds the actual cost of the transcript, the excess payment shall be refunded without interest to the payer. If the actual cost of the transcript exceeds the payment received, the requesting party shall be assessed a charge for such excess cost that must be paid within fifteen days after the date notice of such charge was provided to the party by the panel. If this charge for excess cost is not timely paid, the appeal shall proceed with audio copies of the testimony and the division shall retain all monies previously submitted by the requesting party unless the time for payment is extended for good cause shown as provided in rule 12.1.

- .7 If a party withdraws his or her appeal after the panel has received payment or payments for the transcript, the panel may retain such payments in whole or in part according to the panel's assessment of its own costs in administrative time and expense in preparation of the transcript.
- .8 Any act required by this regulation 11.2.15, except regulation 11.2.15.5, may be permitted outside the time periods set forth herein for good cause shown.
- .9 **Briefing Schedule.** A "brief" for purposes of this rule, shall be any document apparently intended by an interested party to be a written argument. Copies of the audio recording or the transcript of the hearing testimony shall be provided to the interested parties named in the caption of the hearing officer's decision with a notice that the parties may submit a brief. Each named interested party may submit one brief within twelve calendar days after the date the notice was provided to the party by the panel. The panel may, in its discretion, permit the non-appealing party to file a brief in response to the brief filed by the appealing party. Such response brief must be filed with the panel within ten calendar days of the date of the panel's notification, which shall be accompanied by a copy of the appealing party's brief. Requests for extensions of time for the filing of briefs must be in writing as defined in rule 1.3.11.2 and will be granted only on a specific showing of inability to submit a brief within the time limits set forth herein. When a party files an appeal of a hearing officer's decision in circumstances in which no hearing has been held, the appealing party shall submit its written argument, if any, with the appeal.

11.2.16 Decision of the Panel. The panel may affirm, modify, reverse, or set aside a hearing officer's decision on the basis of the evidence in the record previously submitted in the case, which shall include any relevant materials in the case file at the time of the hearing. In addition, the majority of the members of entire panel may remand a case for the taking of further evidence where there has been a compelling demonstration that such evidence, if credited, would establish that a miscarriage of justice has occurred. Prior to determining whether such a remand is appropriate, the panel shall provide written notice of the issue to the interested parties and afford them at least seven (7) calendar days to provide a written response. In determining the issue, the panel members shall consider the following factors: whether the party offering the additional evidence knew or should have known of the existence of the evidence at the time of the hearing; whether the party requested the hearing officer to continue the hearing to allow additional evidence and the hearing officer denied the party's request; whether there is a substantial likelihood that the offer of proof pertaining to the additional evidence would have compelled a substantially different decision by the hearing officer; and whether there is a substantial likelihood that the additional evidence would show that the evidence presented at the hearing was false and that the false evidence had an effect on the outcome of the hearing. The neglect or error of a party's designated representative shall be imputed to the party and shall not constitute a basis for a remand to consider additional evidence under this section. Decisions shall identify those members of the panel who consider an appeal and copies thereof shall be provided to all interested parties or their representatives of record. The decision of the majority shall control, provided, however, that a dissent stating reasons therefor may be filed by the minority.

- .1 **Precedential Decisions.** Upon a unanimous vote of the members of the entire panel, a panel decision may be designated as precedential to be followed by the hearing officers and deputies of the division. Precedential decisions shall meet at least one of the following criteria: 1) The decision interprets a statute, rule, or 2) The decision resolves an apparent conflict of authority. Precedential decisions shall be promptly provided to the hearing officers and deputies of the division. In addition, precedential decisions shall be published and made available to the public in a manner that does not reveal confidential identifying information prohibited by 8-72-107(1), C.R.S.

11.2.17 Disqualification of Examiner. Challenges to the interest of an examiner shall be heard and decided by the panel.

11.2.18 Evidence From Another State. The division may, after notice to the parties, request an agency that administers the employment security law for another state to take evidence in that state for use by the division. Such agency, after notice to the parties, may follow the procedure prescribed by the law and regulations of that state for conducting hearings.

11.2.19 Subpoenas. The division may issue subpoenas to compel attendance of witnesses and production of records for a hearing before a hearing officer. A subpoena shall be served by delivering a copy of the subpoena to the person named therein no later than forty-eight hours before the time for appearance set forth in said subpoena. A subpoena may be served by an interested party, and proof of service shall be made by affidavit setting forth the date, place, and manner of service.

- .1 A party that submits a request for a subpoena shall show:
 - .1 The name of the witness and the address where the witness can be served the subpoena;
 - .2 That the testimony of the witness is material; and
 - .3 That the testimony of the witness is not repetitive.
- .2 If the requesting party wishes the witness to produce books, records, documents, or other physical evidence, the party shall also show:
 - .1 The name or a detailed description of the specific books, records, documents, or other physical evidence the witness should bring to the hearing;
 - .2 That such evidence is material;
 - .3 That such evidence is not repetitive; and
 - .4 That such evidence does not cause an undue burden on the party to whom it is directed.
- .3 If the subpoena or subpoena duces tecum is denied, the aggrieved party may object at the hearing. The hearing officer will consider all objections and responses and supporting evidence, if any, and will grant or deny the request for issuance of the subpoena. If denied, the hearing will proceed on the merits of the issue in dispute. If granted, the hearing shall be adjourned pursuant to regulation 11.2.11.

11.2.20 Appearance of Parties. In a proceeding before a hearing officer or the panel, an individual may appear for himself or herself; a partnership may be represented by any partner or a duly authorized representative; and a corporation or association may be represented by an officer or duly authorized representative.

11.2.21 Designation of Representative. In addition to representatives under regulation 11.2.20, any party may designate another person as an authorized representative in an appeal proceeding before the division or panel.

11.2.22 Preserving Records of Decisions. Decisions of hearing officers and the panel shall be kept in such format as may be determined by the division in the main administrative office of the division in Denver, Colorado for a period of two years after the last decision. Copies of such decisions may be obtained by the interested parties upon written request and the payment of a reasonable fee therefor.

PART XII GOOD CAUSE

12.1 DETERMINATION OF GOOD CAUSE

12.1.1 Statutory References: 8-73-107 (1)(h), 8-73-108 (5)(e)(XVIII)(XIX), 8-74-102, 8-74-106, 8-76-110 (2)(g), 8-76-110 (4)(e), 8-76-113, and 8-79-104 (1)(d), C.R.S.

12.1.2 Purpose. The purpose of this part XII of the regulations is to provide procedures and substantive guidelines for the determination of good cause only when a particular section of the act or regulations other than this part XII of the regulations specifically permits an untimely action or excuses the failure to act as required for good cause shown.

12.1.3 Procedure. Whenever an interested party files an untimely appeal from a deputy's decision, or whenever an appeal from a deputy's decision has been dismissed because the appealing party has failed to appear for a scheduled hearing before a hearing officer and has requested that a new hearing be scheduled, the division shall determine if good cause has been shown for permitting the untimely appeal or excusing the failure to appear. Whenever an interested party files an untimely appeal from a hearing officer's decision, or whenever an interested party failed to appear for a hearing held on an appeal from a deputy's decision and has filed a request for a new hearing, the panel shall determine if good cause has been shown for permitting the untimely appeal or excusing the failure to appear. The division or the panel shall make a determination of good cause only if the untimely appeal or request for new hearing contains a statement of the reasons for which the party failed to act in a timely manner or if information within the appeal file supports a determination of good cause. If the party's untimely appeal or request for a new hearing does not contain such a statement and if the appeal file does not contain information supportive of a finding of good cause, the division or the panel, as appropriate, shall notify the party that the untimely appeal or request for a new hearing shall not be accepted unless the party can show good cause for his or her failure to act as required, and the party shall have ten calendar days from the date of such notice to submit a written statement with the division or the panel, as appropriate. If a party has submitted a written statement with the untimely appeal or initial new hearing request, but the statement is insufficient from which to determine whether or not there is good cause, the division or panel, as appropriate, shall make a reasonable effort to elicit such additional specific information as is necessary to make a determination.

12.1.4 Signing of Statement. All statements provided for the purpose of part XII of these regulations shall be written, signed by the person providing the statement, and may be submitted in person, by mail, by facsimile machine, or by division-approved electronic means, or if submitted to the panel, by panel-approved electronic means.

12.1.5 Determination of Good Cause. Upon receipt of the statement, the chief hearing officer or designee or the panel, as appropriate, shall determine whether good cause has been shown for permitting an untimely appeal from a deputy's decision or a hearing officer's decision; or for permitting the untimely request for a hearing; or for excusing the failure to appear for a hearing. Such determination shall be in writing with supporting findings of fact and shall be provided to all interested parties in person, by mail, by facsimile machine, or by electronic means. If the panel determines that good cause exists for permitting a late appeal, the decision shall contain a written notification that the other-named interested parties may object to the good-cause determination by raising their objections in their written arguments as permitted by regulation 11.2.15.12. The panel shall consider any objections and conduct further appropriate proceedings to reconsider the good-cause determination.

- 12.1.6 Additional Evidence.** In determining whether good cause has been shown for permitting an untimely appeal from a deputy's decision or for excusing failure to appear for a hearing, the chief hearing officer or designee may take or accept additional reliable evidence by such means as shall be deemed appropriate for the resolution of the issue, including holding a hearing. In making an initial determination of whether good cause has been shown for permitting an untimely appeal from a hearing officer's decision or for excusing the failure to appear for a hearing, the panel may request or accept additional written evidence, may obtain additional evidence by other reliable means as shall be deemed appropriate, or may order that a hearing be conducted by a hearing officer to obtain such evidence deemed necessary to resolve this issue.
- 12.1.7 Appeals.** If any interested party objects to a determination of the chief hearing officer or designee or the panel, based solely on written documents, that good cause exists for an untimely appeal from a deputy's decision; or objects to a determination of the chief hearing officer or designee or the panel, that excuses the failure to appear for a hearing or determines that good cause exists for an untimely request for a new hearing; or objects to a determination that good cause exists for accepting an untimely appeal and a new hearing is required because the complete record of the proceedings is no longer available, that interested party may present its objections at the hearing scheduled on the issues in dispute. The hearing officer shall consider all information in support of or in opposition to the good cause determination presented by the interested parties, including all objections and responses and supporting evidence. The hearing officer shall determine if good cause exists for permitting the untimely appeal or excusing the failure to appear or excusing the untimely request for a new hearing based on the evidence presented. However, if the hearing officer does not find the facts to be different than those already considered, the hearing officer shall not disturb the prior determination of good cause, and the hearing will proceed on the merits of the issues in dispute. If good cause is overturned, the hearing will be terminated and any previously vacated hearing officer's decision on the merits of the appeal shall be reinstated.
- 12.1.8 Substantive Guidelines.** In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the division and the panel may consider any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the untimely action or failure to act resulted from circumstances that would cause a reasonably careful individual to neglect a duty, whether the party received timely notice of the need to act, whether there was administrative error by the division, whether there were factors outside the control of the party that prevented a timely action or interfered with the opportunity to act, except that the acts and omissions of a party's authorized representative are considered the acts and omissions of the party and are not considered to be a factor outside the party's control as intended by this rule, the efforts made by the party to seek an extension of time by promptly notifying the division, the party's physical inability to act or take timely action, the length of time the action was untimely, whether any other interested party has been prejudiced by the failure to act or untimely action, the apparent merits of the party's underlying position, and the overall interests of an accurate and fair resolution of the underlying issue to be decided. "Prejudice," as used in this section, means that an interested party will be prevented from presenting or substantially hindered from presenting probative evidence in support of the interested party's position or in the ability to refute the position of the opposing party. However, good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by the party's failure to keep the division directly and promptly informed by a written, signed statement of his or her current and correct mailing address in person, by mail, by facsimile machine, by division-approved electronic means, or by CUBLine, the division's interactive voice response system. This provision shall not apply if it is determined that the party reasonably believed that the division would not have any need for his or her new address under the circumstances or if the party was physically or mentally unable to provide the address in a prompt manner. A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.

PART XIII INTERSTATE ARRANGEMENTS

13.1 PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

13.1.1 Statutory References: 8-72-109 and 8-72-110, C.R.S.

13.1.2 Cooperation With Other States. This section of the regulations shall govern the division in its administrative cooperation with other states that adopt similar regulations for the payment of benefits to interstate claimants.

13.1.3 Definitions. The following definitions shall apply to this section unless the context clearly requires otherwise.

- .1 Interstate Benefit Payment Plan.** The plan approved by the Interstate Conference of Employment Security Agencies (ICESA) under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.
- .2 Interstate Claimant.** An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state or directly with the liable state. The term shall not include an individual who customarily commutes from a residence in any agent state to work in a liable state unless the division determines that such an exclusion would create undue hardship upon claimants in designated areas.
- .3 State.** Any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and the provinces of Canada.
- .4 Agent State.** Any state from or through which an individual files a claim for benefits against another state.
- .5 Liable State.** Any state against which an individual files, from or through another state, a claim for benefits.
- .6 Benefits.** The unemployment compensation payable to an individual under the unemployment insurance law of any state.
- .7 Week of Unemployment.** Any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

13.1.4 Registration for Work.

- .1** Each interstate claimant who files through the agent state or directly with the liable state shall register for work as required by the law, regulations, and procedures of the agent state. Such registration shall be deemed to meet the registration requirements of the liable state.
- .2** The agent state shall duly report to the liable state each interstate claimant who fails to meet the registration or reemployment-assistance-reporting requirements of the agent state.

13.1.5 Benefit Rights of Interstate Claimants. If an interstate claimant files a claim against a state and such state determines that benefit credits are available to the claimant in that state, claims may be filed only against that state and no other state so long as such benefit credits are available. Thereafter, the claimant may file claims against any other state in which he or she has available benefit credits. Benefit credits, for the purposes of this section, shall be deemed to be unavailable whenever benefits are affected by the application of a seasonal restriction or have been exhausted, terminated, or postponed for an indefinite period or for the entire period during which benefits would otherwise be payable.

13.1.6 Claims for Benefits.

- .1 Interstate claims for benefits and waiting periods filed by interstate claimants through the agent state shall be filed in compliance with the uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Such claims filed directly with the liable state shall be filed in accordance with the liable state's procedures. Claims shall be filed to conform to the type of week in effect in the agent state. The liable state shall make required adjustments on the basis of consecutive claims.
- .2 Agent-state regulations for filing intrastate claims with public employment offices or itinerant service points or representative therefor or by mail or by telephone shall apply to interstate claims.
- .3 With respect to weeks of unemployment during which an individual is attached to his or her regular employer, the liable state shall accept as timely any claim that is filed through the agent state within the time limit applicable to such claims under the law of the agent state.

13.1.7 Determination of Claims.

- .1 When an interstate claim is filed, the agent state shall identify to the liable state any potential issue relating to the claimant's availability for work and eligibility for benefits detected by the agent state.
- .2 The agent state's authority and responsibility with respect to the determination of interstate claims shall be limited to the identification of potential issues identified in connection with initial claims or weeks claimed that are filed through the agent state and to the reporting of relevant facts pertaining to the claimant's failure to register for work or report for reemployment assistance as required by the agent state.
- .3 The agent state shall not refuse to accept an interstate claim.

13.1.8 Providing Assistance to Interstate Claimants. Each agent state, upon request by an interstate claimant, shall assist the individual with the understanding and filing of necessary notices and documents. The liable state shall provide interstate claimants with access to information concerning the status of their claims during normal business hours.

13.1.9 Eligibility Review Program. The liable state may schedule and conduct eligibility-review interviews for interstate claimants.

13.1.10 Notification of Interstate Claim. The liable state shall notify the agent state of each initial claim, reopened claim, claim transferred to interstate status, and each week claimed filed from the agent state using uniform procedures and record formats pursuant to the Interstate Benefit Payment Plan.

13.1.11 Appellate Procedure.

- .1 The agent state shall give all reasonable cooperation in conducting hearings and taking evidence in connection with disputed benefit determinations when so requested by a liable state.
- .2 The time limit imposed by the liable state for filing an appeal in connection with a disputed benefit determination shall control, provided, however, that a claimant's appeal shall be deemed to have been made and communicated to the liable state on the date on which it is received by an employee of the agent state.
- .3 The liable state shall conduct hearings in connection with appealed interstate benefit claims. The liable state may contact the agent state for assistance in special circumstances.

13.2 COMBINING EMPLOYMENT AND WAGES

13.2.1 Statutory Reference: 8-72-110 (2), C.R.S.

13.2.2 Purpose of Arrangement. This arrangement is approved by the Secretary of Labor of the United States (Secretary) under the provisions of section 3304 (a)(9)(B) of the *Federal Unemployment Tax Act* to establish a system whereby an unemployed worker, with covered employment or wages in more than one state, may combine all such employment and wages in one state, in order to qualify for benefits or to receive more benefits.

13.2.3 Consultation With the State Agencies. As required by section 3304 (a)(9)(B) of the *Federal Unemployment Tax Act*, this arrangement has been developed in consultation with the state unemployment compensation agencies. For purposes of such consultation, in its formulation and any future amendment, the Secretary recognizes, as agents of the state agencies, the duly designated representatives of the Interstate Conference of Employment Security Agencies (ICESA).

13.2.4 Interstate Cooperation. Each state agency will cooperate with every other state agency by implementing such rules, regulations, and procedures as may be prescribed for the operation of this arrangement. Each state agency shall identify the paying and the transferring state with respect to combined-wage claims filed in its state.

13.2.5 Rules, Regulations, Procedures, Forms - Resolution of Disagreements. All state agencies shall operate in accordance with such rules, regulations, and procedures and shall use such forms as shall be prescribed by the Secretary in consultation with the state unemployment compensation agencies. All rules, regulations, and standards prescribed by the Secretary with respect to intrastate claims will apply to claims filed under this arrangement unless they are clearly inconsistent with the arrangement. The Secretary will resolve any disagreement between state agencies concerning the operation of the arrangement, with the advice of the duly designated representatives of the state agencies.

13.2.6 Effective Date. This arrangement shall apply to all new claims (to establish a benefit year) filed under it after December 31, 1971.

13.2.7 Definitions. These definitions apply for the purpose of this arrangement and the procedures issued to effectuate it.

- .1 **State.** "State" includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

- .2 **State Agency.** The agency that administers the unemployment compensation law of a state.
- .3 **Combined-Wage Claim.** A claim filed under this arrangement.
- .4 **Combined-Wage Claimant.** A claimant who has covered wages under the unemployment compensation law of more than one state and who has filed a claim under this arrangement.
- .5 **Paying State.**
 - .1 The state where a combined-wage claimant files a combined-wage claim, if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages.
 - .2 If the state where a combined-wage claimant files a combined-wage claim is not the paying state under the criterion set forth in regulation 13.2.7.5.1, or if the combined-wage claim is filed in Canada, then the paying state shall be that state where the combined-wage claimant was last employed in covered employment among the states where the claimant qualifies for unemployment benefits on the basis of combined employment and wages.
- .6 **Transferring State.** A state where a combined-wage claimant had covered employment and wages in the base period of a paying state and that transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.
- .7 **Employment and Wages.** "Employment" refers to all services that are covered under the unemployment compensation law of a state, whether expressed in terms of weeks or work or otherwise. "Wages" refers to all remuneration for such employment.
- .8 **Secretary.** The Secretary of Labor of the United States.
- .9 **Base Period and Benefit Year.** The base period and benefit year applicable under the unemployment compensation law of the paying state.

13.2.8 Election to File a Combined-Wage Claim.

- .1 Any unemployed individual who has had employment covered under the unemployment compensation law of two or more states, whether or not he or she is monetarily qualified under one or more of them, may elect to file a combined-wage claim. Said individual may not so elect, however, if he or she has established a benefit year under any state or federal unemployment compensation law and:
 - .1 The benefit year has not ended; and
 - .2 He or she still has unused benefit rights based on such benefit year.
- .2 For the purpose of this arrangement, a claimant will not be considered to have unused benefit rights based on a benefit year that he or she has established under a state or federal unemployment compensation law if:
 - .1 The claimant has exhausted his or her rights to all benefits based on such benefit year; or

- .2 The claimant's rights to such benefits have been postponed for an indefinite period or for the entire period in which benefits would otherwise be payable; or
- .3 Benefits are affected by the application of a seasonal restriction.
- .3 If an individual elects to file a combined-wage claim, all employment and wages in all states in which he or she worked during the base period of the paying state must be included in such combining, except employment and wages that are not transferable under the provisions of regulation 13.2.10.2.
- .4 A combined-wage claimant may withdraw his or her combined-wage claim within the period prescribed by the law of the paying state for filing an appeal, protest, or request for redetermination (as the case may be) from the monetary determination of the combined-wage claim, provided the claimant either:
 - .1 Repays in full any benefits paid to him or her thereunder; or
 - .2 Authorizes the state(s) against which he or she files a substitute claim(s) for benefits to withhold and forward to the paying state a sum sufficient to repay such benefits.
- .5 If the combined-wage claimant files his or her claim in a state other than the paying state, he or she shall do so pursuant to the Interstate Benefit Payment Plan.

13.2.9 Responsibilities of the Paying State.

- .1 **Transfer of Employment and Wages - Payment of Benefits.** The paying state shall request the transfer of a combined-wage claimant's employment and wages in all states during its base period and shall determine his or her entitlement to benefits (including additional benefits, extended benefits, and dependents' allowances, when applicable) under the provisions of its law based on employment and wages in the paying state, if any, and all such employment and wages transferred to it hereunder. The paying state shall apply all the provisions of its law to each determination made hereunder, even if the combined-wage claimant has no earnings in covered employment in that state, except that the paying state may not determine an issue that has previously been adjudicated by a transferring state. Such exception shall not apply, however, if the transferring state's determination of the issue resulted in making the combined-wage claim possible under regulation 13.2.8.2.2. If the paying state fails to establish a benefit year for the combined-wage claimant, or if the claimant withdraws his or her claim as provided herein, the paying state shall return to each transferring state all employment and wages thus unused.
- .2 **Notices of Determination.** The paying state shall give to the claimant a notice of each of its determinations on his or her combined-wage claim that he or she is required to receive under the Secretary's claim-determinations standard, and the contents of such notice shall meet such standard. When the claimant is filing his or her combined-wage claims in a state other than the paying state, the paying state shall send a copy of each such notice to the local office where the claimant filed such claims.
- .3 **Redeterminations.** Redeterminations may be made by the paying state in accordance with its law based on additional or corrected information received from any source, including a transferring state, except that such information shall not be used as a basis for charging the paying state if benefits have been paid under the combined-wage claim.

.4 Appeals.

- .1 Except as provided in regulation 13.2.9.4.3 where the claimant files his or her combined-wage claim in the paying state, any protest, request for redetermination, or appeal shall be in accordance with the law of such state.
- .2 Where the claimant files his or her combined-wage claim in a state other than the paying state or under the circumstances described in regulation 13.2.9.4.3, any protest, request for redetermination, or appeal shall be in accordance with the Interstate Benefit Payment Plan.
- .3 To the extent that any protest, request for redetermination, or appeal involves a dispute as to the coverage of the employing unit or services in a transferring state or otherwise involves the amount of employment and wages subject to transfer, the protest, request for redetermination, or appeal shall be decided by the transferring state in accordance with its law.

- .5 Recovery of Prior Overpayments.** If there is an overpayment outstanding in a transferring state and such transferring state so requests, the overpayment shall be deducted from any benefits the paying state would otherwise pay to the claimant on his or her combined-wage claim, except to the extent prohibited by the law of the paying state. The paying state shall transmit the amount deducted to the transferring state or credit the deduction against the transferring state's required reimbursement under this arrangement. This subsection shall apply to overpayments only if the transferring state certifies to the paying state that the determination of overpayment was made within three years before the combined-wage claim was filed and that repayment by the claimant is legally required and enforceable against the claimant under the law of the transferring state.

.6 Statement of Benefit Charges.

- .1 At the close of each calendar quarter, the paying state shall send each transferring state a statement of benefits charged during such quarter to such state for each combined wage claimant.
- .2 Each such charge shall bear the same ratio to the total benefits paid to the combined-wage claimant by the paying state as his or her wages transferred by the transferring state bear to the total wages used in such determination. The computation of such ratio shall be to the nearest full percentage point.
- .3 With respect to new claims establishing a benefit year effective on and after July 1, 1977, the United States shall be charged directly by the paying state in the same manner as provided in regulations 13.2.9.6.1 and 13.2.9.6.2 of this section 13.2 in regard to federal-civilian service and wages and federal-military service and wages assigned or transferred to the paying state and included in combined-wage claims in accordance with the *Code of Federal Regulations*, 20 C.F.R., parts 609, 614, and 616. With respect to new claims effective before July 1, 1977, prior law shall apply.

13.2.10 Responsibilities of Transferring States.

- .1 **Transfer of Employment and Wages.** Each transferring state shall promptly transfer to the paying state the employment and wages the combined-wage claimant had in covered employment during the base period of the paying state. Any employment and wages so transferred shall be transferred without restriction as to their use for determination and benefit payments under the provisions of the paying state's law.
- .2 **Employment and Wages Not Transferable.** Employment and wages transferred to the paying state by a transferring state shall not include:
 - .1 Any employment and wages that have been transferred to any other paying state and not returned unused or that have been used in the transferring state as the basis of a monetary determination that established a benefit year.
 - .2 Any employment and wages that have been canceled or are otherwise unavailable to the claimant as a result of a determination by the transferring state made prior to its receipt of the request for transfer, if such determination has become final or is in the process of appeal but is still pending. If the appeal is finally decided in favor of the combined-wage claimant, any employment and wages involved in the appeal shall forthwith be transferred to the paying state, and any necessary redetermination shall be made by such paying state.
 - .3 Any employment and wages that would be canceled under the law of the transferring state, if its law does not permit noncharging of benefits paid thereon, except that this subsection shall not apply to requests for transfer made after June 30, 1973, or after amendment of the law to provide for noncharging, whichever is earlier.
- .3 **Reimbursement of Paying State.** Each transferring state shall, as soon as practicable after receipt of a quarterly statement of charges described herein, reimburse the paying state accordingly.

13.2.11 Reuse of Employment and Wages. Employment and wages that have been used under this arrangement for a determination of benefits that establishes a benefit year shall not thereafter be used by any state as the basis for another monetary determination of benefits.

13.2.12 Amendment of Arrangement. Periodically, the Secretary shall review the operation of this arrangement and shall propose such amendments to the arrangement as he or she believes are necessary or appropriate. Any state unemployment compensation agency or the ICESA may propose amendments to the arrangement. Any proposal shall constitute an amendment to the arrangement upon approval by the Secretary in consultation with the state unemployment compensation agencies. Any such amendment shall specify when the change shall take effect and to which claims it shall apply.

13.3 EMPLOYER ELECTIONS TO COVER WORKERS PERFORMING SERVICES IN MORE THAN ONE STATE

13.3.1 Statutory Reference: 8-72-110(3), C.R.S.

13.3.2 Definitions. The following definitions shall apply to this section unless the context otherwise clearly requires:

- .1 **Arrangement.** The Interstate Reciprocal Coverage Arrangement.

- .2 **Jurisdiction.** Any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada or the federal government, with respect to coverage under a federal unemployment compensation law.
- .3 **Participating Jurisdiction.** A jurisdiction whose agency has subscribed to and has not terminated participation in the arrangement.
- .4 **Agency.** Any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.
- .5 **Electing Unit.** An employing unit that requests that the services customarily performed for it by any individual in more than one participating jurisdiction be covered under the law of a single participating jurisdiction.
- .6 **Election.** The request of an electing unit for permission to cover under the law of a single participating jurisdiction all of the services customarily performed for such unit by any individual who customarily works in more than one participating jurisdiction.
- .7 **Elected Jurisdiction.** The participating jurisdiction selected by an employing unit to cover under its law any individual who customarily performs services for such unit in more than one participating jurisdiction.
- .8 **Interested Jurisdiction.** Any participating jurisdiction where the elected jurisdiction submits an election for approval.
- .9 **Interested Agency.** The agency of the interested jurisdiction.
- .10 **Services Customarily Performed.** Services performed by an individual over a reasonable period of time, the nature of which is such that it can be expected that they will continue in more than one jurisdiction; services required or expected to be performed in more than one jurisdiction.
- .11 **Multistate Worker.** An individual who customarily performs services for the same employing unit in more than one jurisdiction.

13.3.3 Procedure.

- .1 An electing unit shall use the prescribed form (Form RC-1) or other methods as may be permitted or required by the Interstate Benefit Payment Plan to file an election to cover multistate workers under the unemployment compensation law of a participating jurisdiction.
- .2 **An election may be filed with any participating jurisdiction where:**
 - .1 Any part of an individual's services are performed.
 - .2 An individual maintains his or her residence.
 - .3 The employing unit maintains a place of business to which the individual's services bear a reasonable relation.
- .3 The agency of the elected jurisdiction shall approve or disapprove the election. If such election is approved, the agency shall forward a copy thereof to each interested agency (as specified on the election form) under whose unemployment compensation law the electing unit's employee might be covered in the absence of such election.

- .4 Each interested agency shall approve or disapprove such election, as soon as practicable, and notify the elected jurisdiction. If the law of the interested jurisdiction so requires, an interested agency may, before taking action, require the electing unit to furnish satisfactory evidence that it has notified affected employees of the election and they have agreed thereto.
- .5 If the agency of the elected jurisdiction disapproves the election, the agency shall notify the electing unit stating reasons therefor.
- .6 An interested agency that disapproves the election shall notify the elected jurisdiction and electing unit, stating reasons therefor.
- .7 The election shall become effective only upon approval of the agency of the elected jurisdiction and one or more interested agencies.
- .8 An interested agency that disapproves the election shall not be bound by such election.
- .9 If the election is not approved by the agencies of all participating jurisdictions, the electing unit may withdraw such election within ten days of notification thereof.
- .10 If the services for which an employer is requesting reciprocal coverage is determined to be employment as defined in the *Colorado Employment Security Act*, such request shall not be granted.

13.3.4 Effective Period.

- .1 An election, duly approved under this regulation, shall become effective at the beginning of the calendar quarter during which such election is submitted unless such election, as approved, specifies a different calendar quarter. An electing unit may request an effective date for a calendar quarter earlier than the calendar quarter during which the election is submitted, provided, however, that such earlier date may be approved solely as to those interested jurisdictions in which the electing unit had no liability to pay contributions during such earlier calendar quarter.
- .2 The application of an election to an individual shall terminate if the agency of the elected jurisdiction finds that the services of such individual are no longer performed in more than one participating jurisdiction. The termination date shall be the last day of the calendar quarter in which notice of termination is mailed to all affected parties. Except as provided in the forgoing paragraph, each election approved under this section shall be in effect through the end of the calendar year in which such election was filed and, thereafter, through the end of the calendar quarter during which the electing unit gives written notice of termination to the agencies of the elected and interested jurisdictions.
- .3 The electing unit shall notify each affected individual when an election under this section ceases to apply to that individual.

13.3.5 Required Reports and Notices.

- .1 The electing unit shall promptly notify each affected individual when an election is approved. Prescribed form Notice to Employee as to Unemployment Compensation Coverage (Form RC-2) shall be used, and a copy thereof shall be forwarded to the elected jurisdiction.

- .2 Whenever an individual affected by an election is separated from employment with the electing unit, such unit shall forthwith again notify said individual of the elected jurisdiction under whose law his or her services have been covered. If the individual is not in the elected jurisdiction when he or she is separated from his or her employment, the electing unit shall give the individual information concerning procedures to follow in filing interstate claims.
- .3 The electing unit shall immediately notify the elected jurisdiction of any changes that are applicable to and affect its election, as when an individual's services will no longer be customarily performed in more than one participating jurisdiction or when a change in an individual's work assignment requires him or her customarily to perform services in an additional participating jurisdiction.
- .4 Notification to the elected jurisdiction pursuant to this regulation 13.3.5 shall be made as permitted or required by the Interstate Benefit Payment Plan.

13.4 INTERSTATE RECIPROCAL OVERPAYMENT RECOVERY

13.4.1 **Statutory References:** 8-72-109(1), 8-72-110, and 8-79-102(1), C.R.S.

13.4.2 **Definitions.** The following definitions shall apply to this section unless the context clearly requires otherwise.

- .1 **State.** Any state of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands.
- .2 **Offset.** The withholding of the overpaid amount against benefits that would otherwise be payable for a compensable week of unemployment.
- .3 **Overpayment.** An improper payment of benefits from a state or federal unemployment compensation fund that has been determined recoverable under the requesting state's law.
- .4 **Participating State.** A state that has subscribed to the interstate reciprocal overpayment arrangement.
- .5 **Paying State.** The state under whose law a claim for unemployment benefits has been established on the basis of combining wages and employment covered in more than one state.
- .6 **Recovering State.** The state that has received a request for assistance from a requesting state.
- .7 **Requesting State.** The state that has issued a final determination of overpayment and is requesting another state to assist it in recovering the outstanding balance from the overpaid individual.
- .8 **Transferring State.** A state in which a combined-wage claimant had covered employment and wages in the base period of a paying state and that transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.
- .9 **Liable State.** Any state against which an individual files, through another state, a claim for benefits.

13.4.3 Recovery of State or Federal Benefit Overpayments.

- .1 **Duties of Requesting State.** The requesting state shall:
 - .1 Send the recovering state a written request for overpayment-recovery assistance that includes certification that the overpayment is legally collectable under the requesting state's law, certification that the determination is final and that any rights to postponement of recoupment have been exhausted or have expired, a statement as to whether the state is participating in cross-program offset by agreement with the U.S. Secretary of Labor, a copy of the initial overpayment determination, and a statement of the outstanding balance;
 - .2 Send notice of the request to the claimant; and
 - .3 Send to the recovering state a new outstanding overpayment balance whenever the requesting state receives any amount of repayment from a source other than the recovering state such as by interception of tax refund.
- .2 **Duties of Recovering State.** The recovering state shall:
 - .1 Issue to the claimant an overpayment-recovery determination that includes the statutory authority for the offset, the name of the state requesting recoupment, the date of the original overpayment determination, the type of overpayment (fraud or nonfraud), program type, total amount to be offset, the amount to be offset weekly, and the right to request determination and appeal of the determination to recover the overpayment by offset.
 - .2 Offset benefits payable for each week claimed in the amount determined under state law.
 - .3 Provide the claimant with a notice of the amount offset.
 - .4 Prepare and forward, no less than once a month, payment representing the amount recovered made payable to the requesting state except as provided in regulation 13.4.4.1.2.
 - .5 Retain a record of the overpayment balance no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefits period, or other extensions of benefits, whichever is latest.
 - .6 Not redetermine the original overpayment determination.

13.4.4 Combined-Wage Claims.

- .1 **Recovery of Outstanding Overpayment in Transferring State.** The paying state shall:
 - .1 Offset any outstanding overpayment in a transferring state(s) prior to honoring a request from any other participating state.
 - .2 Credit the deductions against the statement of benefits paid to combined-wage claimants, Form IB-6, or forward payment to the transferring state as described in regulation 13.4.3.2.4.

.2 Withdrawal of Combined-Wage Claim After Benefits Have Been Paid.

- .1 Withdrawal of a combined-wage claim after benefits have been paid shall be honored only if the combined-wage claimant has repaid any benefits paid or authorizes the new liable state to offset the overpayment pursuant to regulation 13.2.8.4.
- .2 The paying state shall issue an overpayment determination and forward a copy, with an overpayment-recovery request and an authorization to offset, with the initial claim to the liable state.

.3 The recovering state shall:

- .1 Offset the total amount of any overpayment resulting from the withdrawal of a combined-wage claim prior to the release of any payments to the claimant;
- .2 Offset the total amount of any overpayment resulting from the withdrawal of a combined-wage claim prior to honoring a request from any other participating state;
- .3 Provide the claimant with a notice for the amount offset; and
- .4 Prepare and forward payment representing the amount recovered to the requesting state as described in regulation 13.4.3.2.4.

13.4.5 Cross-Program Offset. The recovering state shall offset benefits payable under a state unemployment compensation program to recover any benefits overpaid under a federal unemployment compensation program, as described in the recovering state's agreement with the U.S. Secretary of Labor, and vice versa, in the same manner as required under regulation 13.4.3 and regulation 13.4.4 when both the recovering state and requesting state have entered into an agreement with the U.S. Secretary of Labor to implement section 303(a) of the federal *Social Security Act*.

PART XIV (RESERVED)

PART XV BENEFIT OVERPAYMENTS

15.1 WRITE-OFF OF RECOVERY

15.1.1 Statutory References: 8-74-109, 8-79-102, and 8-81-101(4)(b)(c), C.R.S.

15.1.2 Purpose. The division may write off the recovery of all or part of the amount of overpaid benefits that it finds noncollectible or the recovery of which it finds to be administratively impracticable.

15.1.3 Criteria for Write-Off. In determining whether overpaid benefits are noncollectible or whether the recovery of such benefits would be administratively impracticable, the division shall consider all relevant factors including, but not limited to, the following:

- .1 That the claimant has died.
- .2 That the claimant is totally and permanently disabled.
- .3 That the claimant has retired from the labor force, including consideration of the claimant's age, the likelihood of the claimant's reentering the labor force, the claimant's physical condition, and the claimant's financial status.

- .4 That the claimant has been adjudicated bankrupt.
- .5 That the division determines the costs of collection to exceed the amount of overpayment.
- .6 That the overpaid amount, if not due to false representation or willful failure to disclose a material fact, has remained uncollected for more than five years.
- .7 That the overpaid amount, if due to false representation or willful failure to disclose a material fact, has remained uncollected for more than seven years.

15.2 WAIVER OF RECOVERY

15.2.1 Statutory References: 8-79-102, 8-81-101 (4)(a)(I)(II), and 8-81-101 (4)(c), C.R.S.

15.2.2 Request for Waiver. When a determination establishing an overpayment is final, the overpaid claimant shall be notified of the overpayment and advised that a written request for waiver of recovery may be submitted to the division. Such request shall be submitted in accordance with regulation 1.3.11. Upon receipt of such request, the division shall suspend recovery of the overpayment until the waiver determination is final.

- .1 If the final waiver determination denies said request, subsequent requests for waiver may be submitted upon a showing by the claimant of a significant change in financial conditions affecting his or her ability to repay the overpaid amount, such as catastrophic illness or loss of employment.
- .2 A final determination that approves a waiver request shall apply only to the overpaid balance at the time the request was made, as evidenced by the date received, if mailed or filed in person, the receipt date encoded on a facsimile document, or the receipt date recorded by the division's automated systems if filed using division-approved electronic means and shall not be retroactive to any part of the overpaid amount already recovered.

15.2.3 Requests for Information by the Division. Financial and other relevant information that, in the opinion of the division, is necessary to render a waiver determination may be requested from the claimant by the division in writing. Failure by the claimant to provide the requested information, in writing, to the division within fifteen calendar days of said request shall cause the claimant's request for waiver to be determined based on available information. Information may be submitted to the division in person, by mail, by facsimile machine, or by division-approved electronic means.

15.2.4 Criteria for Waiver. A person who is overpaid any amount of benefits is liable for the amount overpaid. The division may waive the recovery of all or any part of an overpaid amount only when:

- .1 The overpayment did not result from false representation or willful failure to disclose a material fact by the claimant; and
- .2 Requiring repayment would be inequitable.

15.2.5 False Representation. For purposes of part XV of the regulations, the term "false representation" means any representation made by an individual that he or she knew to be false or any representation made by an individual with an awareness that he or she did not know whether the representation was true or false.

15.2.6 Willful Failure to Disclose a Material Fact. For purposes of part XV of the regulations, the term “willful failure to disclose a material fact” means knowingly withholding material information from the division.

15.2.7 Inequitability. In determining whether requiring repayment of an overpaid amount is inequitable, the division shall consider the following factors, which are not exclusive, and any other relevant factors:

- .1 The claimant's financial condition required that the overpaid benefits be spent on reasonable and necessary living expenses.
- .2 The claimant's household income is below the federal poverty income guidelines.
- .3 The claimant lacks the ability to repay the overpaid amount based on prior income level, current household income and assets, and future earnings potential.
- .4 Requiring repayment will cause extraordinary financial hardship by depriving the claimant of the ability to provide for basic necessities that cannot be deferred, such as food, shelter, clothing, utilities, and medical costs not covered by insurance.
- .5 The claimant detrimentally changed his or her position in reliance on the receipt of the overpaid benefits including, but not limited to, entering into a financial and/or contractual obligation that he or she would not have entered except for the receipt of the overpaid benefits.
- .6 The claimant relinquished a valuable right in reliance on the receipt of the overpaid benefits, including the receipt of other governmental benefits for which he or she would have been entitled except for the receipt of the overpaid benefits. Although the claimant is not required to apply for other governmental benefits and be rejected from receiving them, he or she may be required to prove eligibility for such benefits by establishing his or her economic situation at the time unemployment benefits were received as well as the requirements for receiving said benefits.
- .7 The claimant was at fault in causing the overpayment through his or her negligence, carelessness, or acceptance of a payment that the individual either knew, should have known, or reasonably could have been expected to know was incorrect.

PART XVI EMPLOYEE-LEASING COMPANIES

16.1 EMPLOYEE-LEASING COMPANY CERTIFICATIONS

16.1.1 Statutory Reference: 8-70-114, C.R.S.

16.1.2 Employee-Leasing Company Certification Considered. An employer who meets the definition of an employee-leasing company as described in 8-70-114 (2)(a)(V), C.R.S., shall be certified only if:

- .1 The employer completes and submits an initial and annual employee-leasing company application and work-site employer and employee list as required by regulation 16.1.3., and
- .2 Upon filing the application and work-site employer and employee list, the employer submits a nonrefundable fee of \$500, and

- .3 In conjunction with the application, the employer provides evidence of securitization of unemployment premiums as set forth in 8-70-114 (2)(g)(III) and rules part VIII, and
- .4 The employer completes and submits a quarterly report of all terminated and activated employee-leasing company contracts in the previous calendar quarter using such filing methods as may be prescribed by the division. Quarterly reports are to be submitted no later than the last day of the month following the completion of a calendar quarter.

16.1.3 Application for Certification. An employer seeking to be a certified employee-leasing company shall make application with the division upon such forms and using such filing methods as may be prescribed by the division. Such application shall include a complete list of all coemployer clients as follows:

- .1 A list of all work-site employers with whom a coemployment relationship exists that shall include name of each business, the work-site address(es) for each business, actual initiation dates and termination dates of each employee-leasing company contract, gross wages for each business per quarter, the federal employer identification number of each business, and the name, social security number, and quarterly wages of each employee performing work for each coemployer client.

16.1.4 *[Emergency Rule expired 05/06/2009].*

16.1.5 Certification Determination. Upon review of the matters set forth in the application and such other information as it may require, the division shall issue a determination as to the employee-leasing company's certification. Such certification shall be valid until the end of the state's first fiscal year that is more than one year after the effective date of the initial certification.

16.1.6 Appeal From Determination. Any employer who wishes to protest a determination made under the provisions of 8-70-114, C.R.S, or this part XVI of the regulations shall file a notice of appeal with the division. Such notice of appeal must be received by the division within twenty calendar days after the date the certification determination was mailed. A hearing may be obtained in accordance with 8-73-113, C.R.S., and regulation 11.2.

16.1.7 Annual Certification. Subsequent to the initial certification, every employer who has been certified as an employee-leasing company shall file a certification on prescribed forms and using such filing methods as may be prescribed by the division on or before the last day of June of each year, except as set forth in regulation 16.1.4. An employee-leasing company shall retain its certification only if all requirements defined in 16.1.2 are met.

16.1.8 Notification. An employee-leasing company or the work-site employer shall notify each covered employee in writing at the time of hire of the coemployment relationship. The employee-leasing company contract shall specify whether the responsibility for making written notice belongs to the employee-leasing company or the work-site employer.

16.1.9 Loss of Employee-Leasing Company Certification. If an employer, subsequent to the date on which he or she was designated as an employee-leasing company, fails to fulfill the requirements of 8-70-114, C.R.S, or this part XVI of the regulations without good cause, such employer shall lose his or her employee-leasing company certification. Any determination by the division that an employer has lost his or her employee-leasing company certification shall be made in writing and provided to the employer in accordance with regulation 1.3.11.1 said determination shall be subject to appeal pursuant to regulation 16.1.6.

16.2 EMPLOYEE-LEASING COMPANY STATUS

16.2.1 Statutory Reference: 8-70-114

16.2.2 Employee-Leasing Company Reporting Election. At the time of application for certification, an employee-leasing company shall elect to report and pay unemployment insurance taxes under its own account or under the respective work-site employer's account.

16.2.3 Effect of Agency Relationship Upon Status as Employee Leasing Company. - If an entity, or any portion of its business, meets the requirements under section 8-70-114 (2) C.R.S., that entity shall be determined to be an employee leasing company and not an agent, for the purposes of section 8-70-114 C.R.S.

16.3 PROVISION OF BOND OR OTHER SECURITY.

16.3.1 Statutory Reference: 8-70-114 (2)(g)(III), C.R.S.

16.3.2 Holding a Deposit of Money or Security. Any deposit of money or securities in accordance with section 8-70-114 (2)(g)(III)(A) C.R.S. shall be retained by the division in an escrow account until liability under section 8-70-114 C.R.S. is terminated, at which time it shall be returned to the organization, less any deductions pursuant to regulation 16.3.3.

16.3.3 Deduction From a Deposit Of Money or Security. The division may deduct from the money deposited by an employee-leasing company pursuant to rule 16.3.2 or sell the securities an employee-leasing company has so deposited to the extent necessary to satisfy any due and unpaid premiums and any applicable interest and penalties.

16.4 QUALIFIED ASSURANCE ORGANIZATION

16.4.1 Statutory Reference: 8-70-114 (2)(g)(III)

16.4.2 Application to be an Approved Assurance Organization. Any assurance organization seeking to be an approved, qualified assurance organization in accordance with 8-70-114 (2)(g)(III)(C), C.R.S., shall make application with the division using such filing methods as may be prescribed by the division. Such application shall include evidence of securitization of unemployment premiums as set forth in 8-70-114 (2)(g)(III), C.R.S.

16.4.3 Assurance-Organization Approval. Upon approval, each assurance organization shall receive written notification from the division director. Such approval shall be valid for three years unless the assurance organization fails to comply with any provision of the law.

16.4.4 Subsequent Approval. An approved assurance organization shall make subsequent application with the division at least ninety days prior to the expiration date specified in the written approval notice.

PART XVII WORKER CLASSIFICATION

17.1 CLASSIFICATION GUIDANCE AND CLARIFICATION

17.1.1 Statutory Reference: 8-70-115, C.R.S.

17.1.2 Factors to Consider. In determining whether a worker is an employee or independent contractor, the Deputy, Hearing Officer, or Panel considers the nine factors enumerated under § 8-70-115, C.R.S., as well as any other relevant factors, including but not limited to:

- .1 The relationship between the company for whom services are performed and the worker.
- .2 The totality of the circumstances of the relationship between the company for whom services are performed and the worker.

17.1.3 Customarily Engaged in an Independent Trade, Occupation, Profession or Business.

Whether a worker is customarily engaged in an independent trade, occupation, profession or business is dependent upon whether the worker engages in a business that is separate and distinct from the company for whom services are performed. Whether a worker could or does perform services for multiple businesses may be considered in the Division's determination regarding the worker as an employee or an independent contractor, but it is not solely dispositive in that determination.

In reaching its determination, the Division treats every working relationship as unique. The Division does not rely on any single factor, but rather the totality of the circumstances and all relevant factors in accordance with applicable statutes and cases. While these factors may represent consideration as to the status of the working relationship, the circumstances differ from case to case and additional factors not listed may be considered. No single set of factors is exclusive, but the following factors are considered when determining whether an employment relationship exists under the Colorado Employment Security Act:

- .1 The date the worker's business started and whether the company required the worker to start the business in order to perform services for the company.
- .2 If the worker markets his or her own business, and the means used for marketing.
- .3 If the worker's business is viable beyond the scope of the agreement between the worker and the company for whom the services are currently being performed, including whether:
 - .1 The worker's business is economically independent from or is wholly dependent upon continued work with the company for whom services are performed.
 - .2 There is a permanent or continuous working relationship between the worker and the company, and any industry-specific conditions relevant to the permanency.
- .4 If the worker has a business investment such that there is a risk of suffering a loss on the project.
- .5 If the worker uses his or her own equipment while on the project.
- .6 If the rate and method of payment is negotiated by the parties, is established by the worker, or is established by the company for whom services are performed.
- .7 If the worker may employ others or does employ others to complete the work.
- .8 If the worker carries his or her own liability insurance.
- .9 The number of weekly hours the worker performs services for the company.
- .10 If the worker seeks other work for the worker's own business in the same field as he or she performs for the company.
- .11 If the worker has the ability to accept or reject work being offered.
- .12 If the service provided by the worker is an integral part of the company's business.

17.1.4 Worker-Business Relationship.

- .1 The evidence and circumstances must demonstrate that the worker in question is an independent contractor.
- .2 A worker could still be determined to be in covered employment, even if the worker signs a contract or an agreement, if the facts of the relationship establish that an employment relationship exists.
- .3 The existence of an agreement between the worker and the company for the workers' compensation coverage is not determinative of the worker-business relationship for unemployment insurance purposes.

17.1.5 Burden of Proof. The company for whom services are performed has the burden of establishing, by a preponderance of the evidence, that a worker is, in fact, free from control and direction in the performance of the work and is customarily engaged in an independent trade, occupation, or profession related to that work. A written document may establish a rebuttable presumption of independent contractor status only if it includes the applicable factors set forth in § 8-70-115 (1)(c), C.R.S., and the disclosure set forth in § 8-70-115 (2), C.R.S. While an agreement that meets the requirements of § 8-70-115 (1) (c) may shift the burden of proof to the worker or Division, such an agreement is not, in itself, conclusive of whether the worker is, in fact, an employee or an independent contractor.

17.1.6 Compliance Assistance. A business may request that the Division provide educational information as it relates to proper worker classification. A business has further opportunity to request a nonbinding advisory opinion in accordance with Regulation 17.2.

17.2 NONBINDING ADVISORY OPINION

17.2.1 Statutory Reference: 8-72-114 (4), C.R.S.

17.2.2 Issuance of Advisory Opinion. An advisory opinion, described in 8-72-113 (4)(a), C.R.S., shall be issued only if:

- .1 The employer completes and submits a request for a written advisory opinion using such filing methods as may be prescribed by the division; and
- .2 Upon submitting the request for a written advisory opinion, the employer must submit a nonrefundable fee of \$100; and
- .3 In conjunction with the request, as solicited by the division, the employer must provide information and evidence as described in 8-70-115, C.R.S.

17.2.3 The Director shall not use an advisory opinion previously issued pursuant to section 8-72-114 (4), C.R.S. for the purposes of initiating an unemployment insurance audit.

17.3 WORKER CLASSIFICATION INVESTIGATIONS AND FINES

17.3.1 Statutory Reference: 8-72-114 (3), C.R.S.

17.3.2 Written Order. Upon conclusion of a requested investigation of misclassification, the division shall issue a written order in conjunction with an audit report including any determination of the existence of an employment relationship.

17.3.3 Appeal From Determination. Any employer who wishes to appeal a determination made under the provisions of this part XVII of the regulations shall file a notice of appeal with the division. A hearing may be obtained in accordance with 8-76- 113, C.R.S., and regulation 11.2.

17.3.4 The Division, prior to committing department resources to a full audit under the provision of this article, shall take into consideration whether the purported acts of misclassification are inconsistent with section 8-70-115 (1) (b), C.R.S.

17.3.5 Fine. As described in 8-72-114 (3)(e)(III), C.R.S., a fine may be imposed on an employer who misclassified an employee with willful disregard for the law. Such fine shall be imposed in the following manner:

- .1 For the first instance of such misclassification, an employer shall be fined a minimum of one hundred dollars or one hundred dollars for each day that an employee was misclassified, whichever is greater, but the fine shall not exceed five thousand dollars per misclassified employee.
- .2 For the second and any subsequent instance of such misclassification, an employer shall be fined a minimum of one thousand dollars or five hundred dollars for each day that an employee was misclassified, whichever is greater, but the fine shall not exceed twenty-five thousand dollars per misclassified employee.

PART XVIII SPECIAL PROGRAMS

18.1 WORK SHARE

18.1.2 Criteria For Work Share Plan. The director shall deny a work share plan if the employer has seasonal status with the division and any portion of the work share period is during the employer's off-season.

18.1.3 Work Share Plan Modification. An employer can submit a plan modification for a maximum of one new modification every 30 days or no earlier than 30 days after the submission of a plan or plan modification.

18.1.4 Work Share Plan Revocation. The director may revoke approval of a work share plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons. Good cause shall include, but not be limited to, violation of any criteria upon which approval of the plan was based, unreasonable revision of productivity standards for the affected unit, or other conduct by the employer that may compromise the purpose, intent, and effective operation of the plan.

18.1.5 Appeal From Revocation. Any employer who wishes to appeal a revocation made under the provisions of part 18 of the regulations shall file a notice of appeal with the division. No appeal shall be heard unless the notice of appeal has been received by the division within twenty calendar days after the date the notice of such determination is mailed or transmitted by the division to the employer. A hearing may be obtained in accordance with 8-76-113, C.R.S., and Regulation 11.2.

18.1.6 Employee Eligibility Under The Work Share Plan.

- .1 An individual who has received all of the work share benefits and regular unemployment compensation benefits available to him or her in a benefit year is an exhaustee for purposes of 8-75-101 C.R.S. and is entitled to receive extended benefits under such sections, provided the claimant is otherwise eligible for such benefits.

- .2 If an individual who is eligible to receive work share benefits has a prior overpayment, which is still outstanding, the director shall offset such overpayment from work share benefits in accordance with 8-81-101 C.R.S.
- .3 If an individual who is eligible to receive work share benefits has been identified as having outstanding child support obligations, the director shall reduce the work share benefits in accordance with 8-73-102 C.R.S.

18.1.7 Work Share Program Administration. The administration of the work share program shall be as follows:

- .1 A work share plan shall be effective on the date it is approved by the director or the first week specified by the employer, whichever is later.
- .2 A work share plan shall expire twelve months or less after the effective date of the plan, but in no case shall extend beyond July 1, 2013.
- .3 An employer's chargeability under a work share plan is subject to the provisions of 8-73-108 (3)(e)(l) C.R.S.
- .4 An individual who does not work during a week for the work share employer and who is otherwise eligible for benefits shall be paid regular unemployment benefits and the week shall not be counted as a week for which work share benefits were received.

Editor's Notes

History

Parts 1.2, 1.3, 1.9, 2.1., 7.2, 8, 10.1, 11.1, 11.2.13, 11.2.15, 12.1, 16 eff. 02/01/2009.

Part 16.1.4 emer. rule eff. 02/06/2009; expired eff. 05/06/2009.

Part 2.4.5(.1), 2.8.4, 2.8.4(.8) emer. rule eff. 05/29/2009.

Part 2.4.5(.1), 2.8.4, 2.8.4(.8) emer. rule eff. 08/27/2009.

Part 2.2.2 eff. 08/30/2009.

Parts 1.2.19-1.2.20, 1.3.22, 1.7.5, 2.4.5.1, 2.8.4, 2.8.4.8, 16.2.2, XVII eff. 10/30/2009.

Parts 1.2.19-1.2.20, 1.6, 1.11, VI, 7.2, VIII, XI, XII, XVI eff. 12/30/2009.

Parts 2.6; IV; 11.2.2 emer. rule eff. 12/31/2009; expired 03/31/2010.

Parts 2.6; IV; 11.2.2 emer. rule eff. 04/02/2010.

Parts 1.2.21-1.2.22; 2.6, IV, 11.2.2, 17.1.4-17.1.5 eff. 05/31/2010.

Parts 1.3.23-1.3.30; XVIII emer. rule eff. 06/09/2010.

Parts 1.3.23-1.3.30; XVIII eff. 09/30/2010.

Parts 1.3.31, 2.1.12, 6.1.7 emer. rule eff. 11/30/2010.

Parts 1.3.31, 1.8, 2.1.12, 6.1.2, 6.1.7, 7.2.4, 15.2.2 eff. 03/31/2011.

Parts 1.2.23, 2.8.4 eff. 01/01/2012.

Parts 6.1.2, 7.2.4 emer. rule eff. 01/25/2012; expired eff. 05/24/2012.

Parts 1.2.24, 1.2.25, 7.2.6, 7.2.8, 7.2.11, 11.2.9, 11.2.14, 11.2.15, 12.1.3, 12.1.7, 12.1.8, 17 eff. 04/01/2012.

Parts 1.2.26, 6.1.2, 7.2.4 eff. 05/30/2012.

Parts 1.2.27, 1.3.10-1.3.26, 6.1.2, 6.1.5, 7.2.5, 16.2.2, 18.1 eff. 07/30/2012.

Parts 1.2.23-1.2.24, 1.2.26, 1.2.28, 1.3.2, 2.6.4, 6.1.7 eff. 09/14/2012.

Parts 1.2.29, 2.9, 4.1.2, 11.1, 11.2.9, 11.2.15 eff. 05/15/2013; parts 1.7.5, 15.2.7.7 repealed eff. 05/15/2013.

Parts 4.2, 15.2.7.7 eff. 08/01/2014.

Part 2.8.4.4a emer. rule eff. 01/19/2016.

Part 2.8.4.4a eff. 05/15/2016.

Part 2.6.5 emer. rule eff. 09/01/2016.

Parts 2.1.10-2.1.11, 2.3.2-2.3.4, 2.6.1, 2.6.5 eff. 12/15/2016. Part 2.6.4 repealed eff. 12/15/2016.

Parts 17.1, 17.3 emer. rules eff. 01/09/2017.

Annotations

Hearing officer's decision that claimant's appeal of severance benefits was not timely was proper because claimant failed to demonstrate administrative error by the Division. *Nguyen v. Indus. Claims Appeals Office of State of Co., Colo. App. 07CA101*