



State of Vermont
Department of Labor
5 Green Mountain Drive
P.O. Box 488
Montpelier, VT 05601-0488
www.labor.vermont.gov

[phone] 802-828-4100
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August 2, 2011

Gay Gilbert
Administrator
Office of Workforce Security
200 Constitution Avenue NW
Room S-4231
Washington, DC 20210

As noticed on May 27, 2009, the Vermont Department of Labor qualified for and received the first third of the ARRA Modernization Incentive payment. As of today, the Vermont Department of Labor is applying for the remaining two-thirds ARRA Modernization Incentive payment on the basis we now have the necessary two out of four benefit eligibility options to qualify for such.

We have passed legislation and rules to implement training benefits. Specific legislative language was included in Act 156 of the 2010 Legislative session, with the rules being approved by Vermont's Legislative Committee on Administrative Rules on July 28, 2011. The necessary paperwork has been filed which will result in the rules being adopted on August 16, 2011. Please find enclosed the legislative language and the applicable rule.

The second qualifying benefit eligibility relates to part-time workers. Also enclosed is our UI Bulletin that interprets and solidifies our application of a 1976 Vermont Supreme Court decision. Such decision and UI Bulletin provides that an individual will not be denied unemployment compensation benefits related to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work when the majority of the weeks of work in the individual's base period include part-time employment - provided the individual remains available for and is seeking work that is comparable to his or her part-time work experience in the base period.

Vermont intends to use the modernization incentive payment to reduce trust fund obligation and to improve and strengthen our Unemployment Insurance program, with special attention to getting people re-employed and improving the integrity of payments.

Vermont certifies this application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application is based.

If you have questions, please contact Valerie Rickert, Deputy Commissioner at 802-828-4100 or Dirk Anderson, General Counsel at 802-828-4391.

Sincerely,

A handwritten signature in cursive script that reads "Anne M. Noonan".

Anne M. Noonan
Commissioner

Cc: Suzanne Simonetta, Chief, Division of Legislation Office of Unemployment Insurance
Holly O'Brien, Regional Administrator, Boston
Valerie Rickert, Deputy Commissioner
Tracy Phillip, UI Director
Dirk Anderson, General Counsel



**State of Vermont
Department of Labor
Montpelier**

U.I. Bulletin 510
July 30, 2011

Subject: Part-time Employment

Purpose:

To clarify how the department treats individuals with a history of part-time work and his or her related able, availability and suitable work.

Background:

In 1976 the Vermont Supreme Court ruled (*Stryker v. Dept of Emp. Security*) that an unemployment compensation claimant with a long history of part-time work, who established the existence of a meaningful part-time labor market in his or her area, could not be denied benefits on the grounds that the claimant limited him or herself and his or her search for work to part-time work.

In the *Stryker* decision, the Court noted that discussions about availability are reflections of competing concerns. One is that entitlement to unemployment is restricted, as far as possible, to those intended by the legislation to receive benefits. The other is that restrictions not be so stringent as to adversely affect the skills, training and economic contribution of the individual worker. The court also noted that the function of unemployment compensation is not to operate as disability benefits, provide a pension, or perform the function of welfare payments.

The Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of Public Law No. 111-5, enacted February 17, 2009 encouraged states to follow Vermont's lead in that an individual will not be denied Unemployment Compensation (UC) benefits under any provision relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work.

A related provision of Vermont law (21 VSA §1325) states that the experience-rating record of an individual's subject base-period employer shall not be charged for benefits paid if as of the date on which the individual filed an initial claim for benefits, the individual's employment with that employer had not been terminated or reduced in hours. To help facilitate the relief of benefit charges based on this provision, base period "Request for Separation" information forms B-10S and B-10NS instruct the employer to provide relevant information if the worker still works part time.

Definitions:

A part-time employment is when an individual works less than 35 hours in a week. (In accordance with UI Bulletin 462, any individual working 35 or more hours is "totally employed".)

A long history of part-time work is when the majority of the weeks of work in the base period include part-time employment.

Procedure:

When adjudicating potential issues associated with availability for work, active search for work or refusal to accept work, the adjudicator will conduct fact-finding and review the employer's response to prior separation and/or base period notices.

A claimant will not be denied benefits if:

1. the majority of the weeks of work in the claimant's base period include part-time employment; and
2. the claimant remains available for and seeking work that is comparable to their part-time work experience in the base period.

The Vermont Statutes Online

Title 21: Labor

Chapter 17: UNEMPLOYMENT COMPENSATION

21 V.S.A. § 1471. Training benefit program

§ 1471. Training benefit program

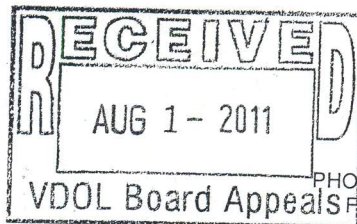
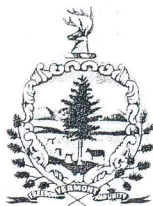
(a) An individual who is otherwise eligible for benefits under this chapter, but who has exhausted his or her maximum benefit amount under section 1340 of this chapter and any other available federally funded extension, is entitled to a maximum of an additional 26 weeks of benefits in the same amount as the weekly benefit amount established in the individual's most recent benefit year if the individual is enrolled in and making satisfactory progress in either a state-approved training program or a job training program authorized under the workforce investment act of 1998.

(b) To be eligible for training benefits under this section an individual shall be in compliance with both the following:

(1) The individual has been separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.

(2) The individual is enrolled in a program designed to train the individual for entry into a high demand occupation. (Added 2009, No. 156 (Adj. Sess.), § E.401.1, eff. June 3, 2010.)

c/o LEGISLATIVE COUNCIL
115 STATE STREET
DRAWER 33
MONTPELIER, VT 05633-5301



PHONE: (802) 828-2231
FAX: (802) 828-2424

Rep. Richard J. Marek, Chair
Rep. Patsy French
Rep. Robert Krebs
Rep. Linda K. Myers

STATE OF VERMONT

Sen. Mark A. MacDonald, Vice-Chair
Sen. Ann E. Cummings
Sen. Diane B. Snelling
Sen. Richard Westman

Legislative Committee on Administrative Rules

TO: Dirk Anderson, General Counsel
Department of Labor
PO Box 488
Montpelier, VT 05601-0488

FROM: Katie Pickens, Committee Assistant *Katie*
Legislative Committee on Administrative Rules

DATE: July 28, 2011

SUBJECT: 10-P49 - Department of Labor/**Rules of the Vermont Employment Security Board**

The Legislative Committee on Administrative Rules (LCAR) considered the above-mentioned rule at its meeting on July 28, 2011. The committee approved the rule with the agency's agreement to delete the words "Montpelier, Vermont" from Rules 13.B.4 and 14.C.1.4 and to modify Rule 30 to conform to the attached document dated July 27, 2011 and received by LCAR on July 28, 2011. In addition, the committee approved an extension of the adoption deadline for this rule until August 19, 2011.

In addition, the board is authorized pursuant to Sec. 4(i) of the committee's rules, to make modifications of a technical and typographical nature and, if necessary, additional modifications consistent with those specifically approved.

The procedure for filing an adopted rule can be found in 3 V.S.A § 843.

cc: Louise Corliss, APA Clerk, Office of the Secretary of State

(802) 828-2863

MEMORANDUM

OFFICE OF THE SECRETARY OF STATE

To: Dirk Anderson, General Counsel, Dept. of Labor PO
Box 488 Montpelier, VT 05601-0488 Tel:
802-828-4391 Fax: 802-828-4046 Email:
dirk.anderson@state.vt.us URL:
<http://labor.vermont.gov> For Copies: Melissa
Kesterson Dept. of Labor PO Box 488 Montpelier, VT
05601-0488 Tel: 802-828-4390 Fax: 802-828-4046
Email: melissa.kesteron@state.vt.us

From: Louise Corliss, APA Clerk

Re: Rules of the Vermont Employment Security Board

Date: 08/01/2011

We received Proposed Rule on 11/10/2010
Final Proposed on 06/16/2011
Adopted Rule on 08/01/2011

We have assigned the following rule number(s):

Proposed Rule Number: 10P049

Adopted Rule Number: 11034

(Final Proposals are not assigned a new number; they retain
the Proposed Rule Number.)

The following problems were taken care of by phone/should be
taken care of immediately:

We cannot accept this filing until the following problems are
taken care of:

The ad for this proposed rule appeared/will appear in
newspapers of record on 11/25/2010 & / / .

This rule takes effect on 08/16/2011

Please note:

If you have any questions, please call me at 828-2863.
OR E-Mail me at: lcorliss@sec.state.vt.us

cc:Katie Pickens

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August 1, 2011

Louise Corliss
Secretary of State
1078 US Route 2 Middlesex
Montpelier, VT 05633-7701

Katie Pickens
Legislative Council
115 State Street
Montpelier, VT 05633-5301

Re: 2011 Employment Security Board Rules, Proposed Rule

Dear Louise,

Enclosed for filing please find the adopted 2011 State of Vermont Employment Security Board Rules. Please let me know if you need anything else from me.

Please note that the adopted Rule reflects minor changes to Rule 30, which were approved by LCAR, and a copy of which is enclosed with this filing. Additionally, the words "Montpelier, Vermont" were removed from Rule 13(B)4) and from Rule 14(C)(4), which change was also approved by the Committee.

Sincerely,



Dirk Anderson
General Counsel



Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Rules of the Vermont Employment Security Board

2. ADOPTING AGENCY:

Department of Labor

3. AGENCY REFERENCE NUMBER, IF ANY:

10P-049

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

5. LAST ADOPTED (*PLEASE PROVIDE THE TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

Last substantive to the Rules of the Employment Security Board was in 1985; in 2007, the Rules were amended to reflect the change from the Department of Employment and Training to the Department of Labor.

Run Spell Check

Administrative Procedures – Adopted Rule Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this adopted filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Adopted Rule Coversheet
- Adopting Page
- Clean text of the rule (Amended text without annotation)
- Letter explaining in detail changes from final proposal.

All forms submitted to the Office of the Secretary of State, requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Rules of the Vermont Employment Security Board

Anne M. Noonan, on 7/29/2011
 (signature) (date)

Printed Name and Title:

Anne M. Noonan
 Commissioner Of Labor

RECEIVED BY: _____

- Adopted Rule Coversheet
- Adopting Page
- Clean text of the rule (Amended text without annotation)
- Letter explaining in detail changes from final proposal.

1. TITLE OF RULE FILING:
Rules of the Vermont Employment Security Board
2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
10P-049
3. ADOPTING AGENCY:
Department of Labor
4. LEGAL AUTHORITY / ENABLING LEGISLATION:
(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).
21 V.S.A. Sectin 1302 (b)
5. THE FILING HAS CHANGED SINCE THE FILING OF THE FINAL PROPOSED RULE.
6. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE, INCLUDING CHANGES IN ECONOMIC IMPACT.
7. THE LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES DID NOT OBJECT TO THE FINAL PROPOSAL.
8. PROCEDURAL HISTORY OF ADOPTION:
ICAR Filing: 10/18/2010
Proposal Filed with Office of the Secretary of State: 11/10/2010
Notices Posted Online: 11/17/2010
Notices Published In Newspapers of Record: 11/25/2010
A Hearing WAS Held.
Hearings Held *(PLEASE USE ADDITIONAL SHEETS TO PROVIDE THE DATE, TIME AND LOCATION OF ALL HEARINGS IF THIS FORM IS INSUFFIENCT TO LIST ALL HEARINGS HELD)*:
Date: 12/17/2010
Time: 09:00 AM
Location: VT Interactive Television: Montpelier, Bennington, Brattleboro, Castleton, Johnson,

Middlebury, Newport, Springfield, St. Albans,
Waterbury, WRJ

Date:

Time: PM

Location:

Date:

Time: PM

Location:

Date:

Time: PM

Location:

Deadline for Public Comment: 12/27/2010

Final Proposal —

Filed with Secretary of State: 06/16/2011

Filed with LCAR: 06/16/2011

Dates of LCAR Review: 07/28/2011, , ,

Adopted Rule —

Filed with Secretary of State: 08/01/2011

Filed with LCAR: 08/01/2011

9. EFFECTIVE DATE: 08/16/2011

(A RULE MAY TAKE EFFECT 15 DAYS AFTER ADOPTION IS COMPLETE OR AT A LATER TIME PROVIDED IN THE TEXT OF THE RULE SEE 3 V.S.A. §845(d) FOR DETAILS).

Run Spell Check

**Rules of the
VERMONT EMPLOYMENT SECURITY BOARD
Unannotated Version**

The Department of Labor, created by Section 212 of Title 3 of the Vermont Statutes Annotated, consists of the Commissioner of Labor, the Workforce Development Division, Labor Market Information Division, Workers' Compensation and Safety Division, and the Unemployment Insurance and Wages Division. The Commissioner of the Vermont Department of Labor chairs the Vermont Employment Security Board.

The Vermont Employment Security Board, a board of three members appointed by the Governor with the advice and consent of the senate, hears and decides all matters appealed to it under the unemployment compensation law. The Board also adopts, amends, suspends or rescinds such rules and regulations as it considers necessary and consistent with the unemployment compensation law.

Information may be obtained by any person at the central office of the Department of Labor either by personal appearance or by written communication.

RULE 1. PETITION FOR DECLARATORY RULING, AMENDMENT OF RULES

A. Procedure

1. Any interested person may petition the Vermont Employment Security Board, Department of Labor, for a declaratory ruling as to the applicability of any provision of Chapter 17 of Title 21 of the Vermont Statutes Annotated or of any rule or order of the Vermont Employment Security Board.

The petition must contain sufficient facts from which it can be determined that a real question exists concerning the applicability of any provision of said law or of any rule or order of the Vermont Employment Security Board to the petitioner and that a declaratory ruling by the Board would resolve the question. The Board shall consider the petition and within a reasonable time shall:

- (a) Issue a declaratory ruling; or
- (b) Notify the petitioner that no declaratory ruling is to be issued; or
- (c) Set a reasonable time and place for hearing argument upon the matter and give reasonable notification to the petitioner, and any other person or persons named as a party to the proceedings, of the time and place for such hearing and of the issue involved.

2. If a hearing as provided in (1) (c) above is conducted, the Board shall within a reasonable time:

(a) Issue a declaratory ruling; or

(b) Notify the petitioner that no declaratory ruling is to be issued.

B. Parties

When a declaratory ruling is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaratory ruling shall prejudice the rights of persons not parties to the proceeding.

C. In addition to seeking a declaratory ruling, any individual may request that the Rules of the Employment Security Board be amended. The Board, in consultation with the commissioner, shall consider and act on such request consistent with the requirements of the Vermont Administrative Procedures Act, as set forth in 3 V.S.A. Sections 817- 849.

RULE 2. DEFINITIONS

A. Except where the context clearly requires otherwise, the definitions in Chapter 17 of Title 21 of the Vermont Statutes Annotated, and section 801 of Title 3 of the Vermont Statutes Annotated, shall apply to the terms used in these rules.

B. "Wages paid" includes both wages actually received by the worker and wages constructively paid. Wages are constructively paid when they are 1) credited to the account of or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made; 2) made available so that they may be drawn upon by the worker at any time; or 3) brought within the worker's own control and disposition or legally due, although not then actually reduced to possession.

C. Week shall mean the seven consecutive days commencing at 12:01 A.M. Sunday and ending 12:00 midnight the following Saturday.

D. "Full time" work means 35 or more hours of work in a week.

E. "Domestic service" means services of a household nature in or about a private home. In general, services of a household nature include services performed by a cook, food server, butler, housekeeper, child care provider, janitor, launderer, caretaker, gardener, groom, chauffeur and personal care attendant. Service of a household nature does not include such services as private secretary, tutor, or

librarian even though performed in the employer's private home.

F. "Registration for work" means that an individual has provided the Department his or her name, usual occupation, correct mailing address and such other information as required by the Commissioner and has declared his or her availability for suitable work. The registration for work shall continue in effect for as long as the individual continues to report in intervals of one week, unless otherwise directed. The registration for work will terminate on the date the claimant fails to:

1. report at an employment office as directed; or;
2. complete required application(s) designed to facilitate job referrals as directed; or
3. contact the Unemployment Insurance Claims Center as directed;

unless good cause is shown for such failure to act as directed in subsections 1, 2 and 3 above, on the date he or she again becomes attached to a regular employer or on the date he or she notifies the Unemployment Insurance Claims Center of his or her unavailability for work.

G. "Interested parties" – Interested parties shall include the claimant, the claimant's last separating potentially liable employer, and in the case of an appeal under Rules 21, 22 or 23, the affected employer and the Unemployment Insurance and Wages Division.

H. "Employment office" means any office maintained by the Department of Labor.

I. "Claim for benefits" means a new, transitional, additional, reopened or continued claim.

J. "New claim" means an application for the establishment of a benefit year, a determination of eligibility for benefits and a determination of-a weekly benefit amount.

K. "Transitional claim" means an application for determination of continued eligibility for benefits which initiates the establishment of a new benefit year without interruption in the payment of benefits.

L. "Additional claim" means an application for determination of eligibility for benefits which certifies to the beginning date of a period of unemployment falling within a benefit year previously established, for which a continued claim or claims may be filed, and which follows a period of employment which occurred subsequent to the date of filing the last new, transitional, additional, reopened or continued claim.

- M. "Reopened claim" means an application for determination of eligibility for benefits and which certifies to the beginning date of a period of unemployment falling within a benefit year previously established for which a continued claim or claims may be filed, and which follows a break in the claim series previously established, due to illness, disqualification, unavailability, or failure to report for any reason other than re-employment.
- N. "Continued claim" means an application for benefits which certifies to the completion of a week of total or partial unemployment.
- O. "Claimant" means an individual who has filed a claim for benefits with the Unemployment Insurance Claims Center.
- P. "Commissioner" means the Commissioner of Labor or his or her authorized representative.
- Q. "Employing unit" is, in addition to the definition in 21 V.S.A. 1301(4), the entity that benefits by the employees' services and provides the business purpose for which the employees work.
- R. "Fraud" is the conduct described in 21 V.S.A. Section 1347(e); the intentional misrepresentation or failure to disclose a material fact, with respect to the person's claim for benefits, whether or not benefits are paid.
- S. "Administrative law judge," or ALJ, means the appellate hearing officer identified by 21 V.S.A. Section 1348 as the appeals referee.

RULE 3. POSTING AND FURNISHING NOTICES

Every employer (including every employing unit which has, with the approval of the Commissioner, become an employer by election under the provisions of unemployment compensation law) shall post and maintain printed notices to its workers in a conspicuous location in the workplace informing them that it is liable for contributions under the law. Such notice provided by the Department shall be posted pursuant to V.S.A. 21, Section 1346. No such notice shall be posted or maintained by any person or employing unit to whom an unemployment compensation account number has not been assigned by the Commissioner or who has ceased to be an employer.

RULE 4. RECORDS

- A. Each employing unit shall maintain and preserve for four years accounts and records with respect to workers engaged in subject employment and non-subject employment which shall show:
 - 1. For each pay period:

- (a) The date and total amount of remuneration paid for subject employment;
- (b) The date and total amount of remuneration paid for non-subject employment;
- (c) The beginning and ending dates of each pay period;
- (d) The beginning and ending dates of such subject employment and such non-subject employment.

2. For each worker:

- (a) Name, address, and social security account number;
- (b) Place of employment;
- (c) Hourly rate of pay or salary amount and the frequency of payment;
- (d) Date on which worker was hired, or returned to work after a temporary layoff, and date separated from work and reason therefor;
- (e) The actual days worker performed services in employment each week and the actual number of hours worker performed services in employment each day;
- (f) Total remuneration paid in each quarter;
- (g) Worker's remuneration paid for each pay period showing separately:
 - i. Money payments (excluding special remuneration.)
 - ii. Special remuneration of all kinds showing separately:
 - (A) Money payments;
 - (B) Reasonable cash value of payments in any medium other than money;
 - (C) The nature of such special remuneration; and
 - (D) The period or periods during which the services were

performed for which the special remuneration was paid.

- iii. The reasonable cash value of remuneration paid by the employing unit in any medium other than cash, i.e. lodging, room and board, etc.).
 - iv. The amount of gratuities received from persons other than his or her employing unit and reported by the worker to his or her employing unit.
 - v. Amount paid worker as allowances or reimbursements for traveling or other business expenses, dates of payment, and the amounts of such expenditures actually incurred and accounted for by worker.
- B. Each employing unit shall keep its payroll records in such form that it will be possible for an inspection thereof to determine with respect to each worker in its employ who may be eligible for partial benefits:
1. Wages earned for any week of employment;
 2. Whether any week was in fact a week of less than full time work as defined in Rule 2(D);
 3. Time lost, if any, by each worker and reason therefor.
- C. An employing unit having its principal place of business outside of Vermont shall maintain payroll records, in accordance with Rule 4.A. of these Rules, in this state with respect to wages paid to employees who perform some service in this State, provided, however, that an out-of-state employing unit may, with the approval of the Commissioner, maintain such payroll records outside of the State upon its agreement that it will, when requested to do so, furnish the Commissioner with a true and correct copy of such payroll records.
- D. Each employing unit shall make available upon request the following records and documents, to enable proper assessment of covered employment under the applicable U. C. laws and the associated tax liabilities:
1. Check stubs and cancelled checks for all payments;
 2. Cash receipts and disbursement records;
 3. Payroll journal and time cards;

4. General journal and general ledger;
5. Copies of tax reports filed with all federal and state agencies;
6. Copies of IRS forms W-2, W-3, and 1099.

RULE 5. IDENTIFICATION OF WORKERS

- A. Each employer shall ascertain the social security number of each worker performing services for it in employment.
- B. If such worker does not have a number, the employer shall request the worker to produce a receipt issued by an office of the Social Security Administration indicating that the worker has filed an application for a number. The receipt shall be retained by the worker.
- C. Each employer shall report a worker's social security number in making any report required by the Commissioner with respect to such worker. If the worker has no such number, but has produced a receipt indicating that he or she has filed an application for one, the employer shall, in making a report required by the Commissioner with respect to such worker, report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.

RULE 6. WAGE REPORTS AND CONTRIBUTIONS

- A. An employer shall, not later than the last day of the month following the close of each calendar quarter, file with the Commissioner on forms approved by the Commissioner, a report with respect to such calendar quarter setting forth wages paid during such calendar quarter for employment to individuals in its employ.
- B. Contributions are required of employers quarterly, and shall become due and payable on or before the last day of the month next following the quarter for which such contributions have accrued, unless the employer has been approved for alternate payments as provided in Rule 31.
- C. The first contribution payment of any employing unit that becomes an employer within any calendar quarter of any calendar year shall become due and payable on or before the last day of the month next following the close of the quarter in which it became a subject employer.
- D. The first contribution payment of any employing unit which elects to become an employer shall upon written approval of such election by the Commissioner become due and payable on or before the last day of the month next following the close of the calendar quarter which includes the effective date of such

election. Such first payment shall include contributions with respect to all wages for services covered by such election paid on or after the effective date and up to and including the last day of such calendar quarter.

- E. The Commissioner may advance the due date of an employer's report and contribution to such a date as is deemed advisable upon finding, with respect to a particular employer, that the collection of contributions which have accrued during any completed or quarterly period may be jeopardized by delay
- F. Whenever the Commissioner has, in writing, advised an employing unit that it has been determined not to be an employer or that services performed for it do not constitute employment, and a legal obligation on the part of such unit to pay contributions is thereafter established, accrued contributions shall become due and interest shall accrue thereon fifteen days after such employing unit is informed of its liability.
- G. When the regular payment day for a contribution falls on a weekend or legal holiday such contributions shall be due and payable on the first regular business day next following.
- H. Payment of contributions received through the mail shall be deemed to have been made and received on the date shown by the postmark. Payment made by electronic fund transfer (EFT) shall be deemed to have been paid on the executed date or the advance date selected, not to exceed the due date for such quarter.
- I. The Commissioner may, where practical, require employing units with 25 or more employees to file all required reports and pay amounts due associated with such filing, through electronic means approved by the Commissioner.

RULE 7. CASH VALUE OF CERTAIN REMUNERATION

- A. Each employing unit required to report wages and pay contributions thereon under Chapter 17 of Title 21 of the Vermont Statutes Annotated, where such wages include remuneration paid in any medium other than cash (excepting board and/or lodging), shall estimate and determine such remuneration at the fair market value thereof at the time such remuneration became payable.
- B. The cash value of board and/or lodging payable as part or all of the wages for personal services of individuals in employment by any employer shall be reported and contributions paid thereon. Where the cash value of such board and/or lodging is agreed upon in a contract of hire, the amount so agreed upon shall be deemed to be the cash value of such payment.

In the absence of such an agreement the cash value of such lodging shall be the

fair market rents (FMR), as published by the US Department of Housing and Urban Development, for the county in which the job resides. In the absence of an agreement the cash value of the board shall be based on the current rate established under the "Thrifty Food Plan" by the USDA Food and Nutrition Service.

RULE 8. EMPLOYERS' WAGE RECORDS AND SEPARATION DATA

- A. Every employing unit, for each week in which any employee shall have worked less than his or her normal customary full time hours, shall furnish to such individual, at his or her request, or at the request of the Commissioner, a written statement of the amount of wages earned and hours worked in such week.
- B. Each employer shall, within 24 hours after the worker is separated from his service (permanently or for an indefinite period or for an expected duration of seven or more days), notify the worker of the location of the notice posted in accordance with Rule 3.
- C. The term "mass separation" means a separation (permanently or for an indefinite period or for an expected duration of seven or more days) at or about the same time and for the same reason, 1) of 20 or more percent of the total number of workers employed in an establishment, 2) of 50 or more percent of the total number of workers employed in any division or department of an establishment, or 3) notwithstanding either of the foregoing, of 25 or more workers employed in a single establishment. In such cases an employer shall file with the Department of Labor's Unemployment Insurance Claims Center, a notice of such mass separation. Such notice shall be filed not later than 24 hours after such separation. Upon request by the Commissioner, such employer shall furnish to the Commissioner pertinent information necessary to establish "mass separation" unemployment claims. Such information will include but is not limited to the following: individual names, social security numbers, mailing addresses, and any separation pay of the affected workers.
- D. In case of total unemployment due to strike, lockout, or other labor dispute, the employer shall, within 24 hours, file with the Department of Labor's Unemployment Insurance Claims Center, in lieu of mass separation notice, a notice setting forth the existence of such dispute and the number of workers affected. Upon request by the Commissioner, such employer shall furnish to the Commissioner the names, social security numbers, mailing addresses, and any separation pay of the workers ordinarily attached to the department or the establishment where unemployment is caused by strike, lockout, or other labor dispute.
- E. If the Commissioner finds that the failure of any individual to file a claim for partial benefits was due to a failure on the part of the employer to furnish the individual

with information advising him or her of his or her right to file a claim for unemployment benefits, or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to the failure by the Commissioner to discharge his or her responsibilities promptly in connection with such partial unemployment, the Commissioner shall extend the period during which such claim may be filed to a date which shall not be more than two weeks after the individual has received such written statement; nor less than one week after any of the above specified causes for failure to file a claim has been removed.

RULE 9. SEPARATION REPORTS

- A. When an individual files a new claim, he or she shall furnish to the Commissioner all information the Commissioner requires concerning his or her prior employment. The Commissioner, when necessary, shall request employment, separation, and wage information from the claimant's base period employer or employers on a form designed for that purpose. Every such employer shall furnish to the Commissioner employment, separation and wage information necessary for the determination of the claimant's entitlement to benefits within 10 days of the date such written or verbal request is made of the employer by the Commissioner.
- B. When an individual files an additional claim, the Commissioner shall request employment and separation information from his or her last employer or employers, on a form designated for that purpose. When required, the employer, or employers, shall furnish to the Commissioner the information within 10 days of the date such written or verbal request is made of the employer by the Commissioner.
- C. If an employer fails to respond within 10 days of the date the Commissioner makes a written or verbal request for employment, separation and/or wage information with respect to a claimant, the Commissioner shall determine the benefit rights of the claimant upon such information as is available. A determination shall be final with respect to a non-complying employer as to any charges against his experience-rating record for benefits paid to the claimant before the week following the receipt of his reply and his experience-rating record shall not be relieved of those charges unless the amount of benefits is recovered from the claimant or unless the Commissioner determines that the failure to comply was due to an unavoidable accident or mistake. Any required responses to separation reports received after the tenth day from the date of the mailing or personal delivery of the request for such information will subject the employer to a penalty as prescribed under Section 1314 of Title 21 of the Vermont Statutes Annotated.

RULE 10. CLAIMS FOR BENEFITS

- A. An individual seeking to claim benefits for a week of total or partial unemployment shall contact, by telephone or other approved method, the Unemployment Insurance Claims Center to file a new, additional or reopened claim for benefits. The effective date established for a new, additional, or reopened claim for benefits will be the Sunday immediately preceding the date the claim is filed. The effective date for a transitional claim filed within 13 days of the prior claim expiring will be equal to the day following the benefit year ending date of the expired claim. Such effective date shall also be used for purposes of establishing the claimant's maximum weekly benefit amount. Once a claim for benefits is filed, it cannot be withdrawn.
- B. An individual's first week of total or partial unemployment following a separation from his or her employment shall begin on the first day of the week in which the individual files a new, additional or re-opened claim for benefits
- C. The Commissioner may, as a condition of eligibility for benefits, require that a totally or partially unemployed worker:
1. Participate in reemployment services as ordered, and
 2. Provide documentation sufficient to establish the worker's identity.
 3. Provide the name and telephone number of all employers the worker contacted when searching for work during any week in which benefits are claimed.
- D. In order to establish eligibility for benefits for weeks of total or partial unemployment, during a continuous period of total or partial unemployment, the claimant shall, except for good cause, file a continued claim for benefits within six days of the week ending date being filed.
1. The Commissioner, for reasons found to constitute good cause for a claimant's failure to file a weekly claim for unemployment benefits, may accept a continued claim for benefits for such claimant, effective as of the time specified, if such continued claim for benefits is filed at the first available opportunity but within thirteen days of the last day of the week being filed.
 2. A claimant who becomes ill or disabled, after filing a claim for benefits, may continue his or her claim by mail, internet, or by telephone or through a designated representative provided such continued claim is filed at the first available opportunity but not later than thirty days of the last day of the week being filed and provided satisfactory evidence of such illness or disability is produced.

- E. A continued claim for benefits shall be made on either a form provided by the department by mail, by telephone, via the internet, or by other approved method, setting forth: 1) that the claimant continues his or her claim for benefits; 2) that the claimant was totally or partially unemployed; 3) that during the period for which the claimant files a claim he or she performed no work or earned no wages except as indicated; 4) that the claimant is able to work and available for work; 5) that the claimant has looked for work as directed, and 6) such other information as is required by the Commissioner.

RULE 11. BENEFITS DUE DECEASED CLAIMANTS

Upon the death of any claimant who had filed for benefits, and in the event it is found by the Commissioner that the benefits have accrued and are due and payable to such claimant and remain wholly or partially unpaid at the time of such claimant's death, or in the event there have been issued and unpaid one or more benefit checks, such benefits shall, upon application to the Department, be paid to the duly qualified administrator or executor of the estate of the deceased claimant. If it is shown to the satisfaction of the Commissioner that there is no executor, and no administrator has been appointed, and, in all probability no administrator will be appointed, payment of such benefits may be made to the surviving spouse or next of kin of the deceased claimant upon application for receipt of such benefits, due regard being given to the following order of preference:

1. the surviving spouse or civil union partner
2. children
3. parents
4. brothers and sisters
5. other relatives

The Commissioner, however, is not bound to follow such order of preference if the same shall appear inequitable.

Any person, other than the duly qualified administrator or executor of the estate of a deceased claimant, claiming benefits which are due and payable to such claimant shall make written application for such benefits, which application may be supported by an affidavit setting forth the relationship of the person claiming such benefits to the deceased claimant. Said affidavit shall also set forth that said claimant died intestate, and that no administrator or executor has been appointed, and that there is no estate for administration.

Payment made in accordance with the requirements of this rule shall, for all purposes, be deemed to have been made to the person or persons entitled thereto and shall fully discharge the fund from liability for such benefits.

RULE 12. INTERSTATE BENEFIT PAYMENTS

A. The following rule shall govern the Commissioner of Labor, in his or her administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

B. Definitions

1. "Interstate Benefit Payment Plan" means the plan approved by the National Association of State Workforce Agencies or successor organization 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" means an individual who claims benefits under the unemployment insurance law of one or more liable States through the facilities of an agent State. The term "interstate claimant" shall not include any individual who customarily commutes from a residence to an agent State to work in a liable State unless the Commissioner of Labor finds that this exclusion would create undue hardship on such claimants in specified areas.
3. "State" includes the Commonwealth of Puerto Rico, the District of Columbia and the Territory of the U.S. Virgin Islands.
4. "Agent State" means any State in which an individual files a claim for benefits from another State.
5. "Liable State" means any State against which an individual files, through another State, a claim for benefits.
6. "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any State.
7. "Week of unemployment" includes any week of unemployment as defined in the law of the liable State from which benefits with respect to such week are claimed.

C. Registration for work.

1. Each interstate claimant shall be registered for work through any employment office in the agent State when and as required by the law, regulations, and procedures of the agent State. Such registration shall be accepted as meeting the registration requirements of the liable State.
2. The Commissioner may require interstate claimants to provide evidence

that they have registered for work in the labor market area in which they reside.

D. Benefit Rights of Interstate Claimants

If a claimant files a claim against any State, and it is determined by such State that the claimant has available benefit credits in such State, then claims shall be filed only against such State as long as benefit credits are available in that State. Thereafter, the claimant may file claims against any other State in which there are available benefit credits. For the purposes of this rule, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

E. Claims for Benefits

1. Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent State. Any adjustments required to fit the type of week used by the liable State shall be made by the liable State on the basis of consecutive claims filed.
2. Claims shall be filed in accordance with agent State regulations.

F. Determination of Claims

1. The agent State shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable State in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent State.
2. The agent State's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent State shall not refuse to take an interstate claim.

G. Appellate Procedure

1. The agent State shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.
2. With respect to the time limits imposed by the law of a liable State upon

the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable State on the date when it is received by any qualified officer of the agent State.

- H. Extension of Interstate Benefit Payments to Include Claims taken in and for Canada.

This rule shall apply in all provisions to claims taken in and for Canada.

RULE 13. BENEFIT APPEAL RULES PERTAINING TO ADMINISTRATIVE LAW JUDGE

- A. Recusal of Administrative Law Judge ("ALJ") from Participation in Hearing:

No ALJ shall participate in the hearing or disposition of any appeal in which he or she has an interest in the outcome of the proceedings, or has had any direct participation in the determination appealed from, or has any other interest or prejudice that will impair a fair and impartial hearing.

Challenges to the interest or prejudice of an ALJ: 1) may be presented to the Commissioner at any time prior to the date of final decision of the ALJ; 2) may be presented to the Employment Security Board in accordance with the pre-hearing filing requirements, and shall become a part of the record of such hearing.

Notice of any action on a challenge to interest or prejudice herein provided shall be given to all interested parties,

In the event the challenge is made prior to the hearing and is not heard immediately or is referred to the Board, the hearing of the appeal shall be continued until the disposal of such challenge.

The ALJ shall cause all parties to be notified of the new date set for such hearing by mailing a notice of continued hearing to all parties to the appeal at least six days before the date set for the new hearing.

- B. Filing of Appeal:

A party appealing a benefit determination must file with an ALJ employed by the Commissioner a written notice of appeal. The appeal may be submitted: 1) by U.S. mail to the Department of Labor; 2) by e-mail or other electronic method approved by the Commissioner; 3) by facsimile; or 4) in person at any office of the Department of Labor.

- C. Time of Filing:

The notice of appeal must be filed within thirty (30) calendar days from the date of the benefit determination.

D. Form of Appeal:

Appropriate forms of filing such appeals shall be prescribed by the Board and may be obtained from the central office of the Department, or at any employment office, or at <http://labor.vt.gov>.

Use of a prescribed form is not mandatory to initiate an appeal. Any written notice that sufficiently identifies the appellant and that may be construed as an appeal, filed within the prescribed period, shall be deemed to initiate an appeal and will constitute an appeal from such determination.

E. Execution of Appeal:

With the exception of appeals filed by e-mail or other electronic method approved by the Commissioner, The notice of appeal shall be signed by the party appealing or his or her authorized agent. If a notice of appeal is signed by an appellant's authorized agent, the name of the appellant shall be set forth in the appeal document followed by the signature or name of the authorized agent.

F. Multiple Appeal:

If an appeal from a benefit determination involves more than one claimant on the same issue, the appeal may be filed by the individual claimants or on their behalf by an authorized representative who shall, together with the appeal, submit a list containing the names, and addresses of all claimants, parties to the appeal.

G. Notice of Appeal:

A copy of the notice of appeal shall be mailed by the ALJ to the other interested parties to the determination which is being appealed.

H. Proceedings in the Case of Late Filing of Appeal:

If it appears to the ALJ that the appeal was not filed within the time allowed by law, an order may be entered reciting the essential facts which establish the failure to file the appeal within the time allowed and dismissing the appeal. A copy of such order shall be mailed to each of the interested parties. Any party objecting to the order may, within ten (10) days after the date of the mailing of the order, request that the order be reconsidered and that the matter be set down for hearing on both the timeliness of the appeal and the merits, in which event, such matter shall be scheduled for hearing on both issues.

I. Notice of Hearing:

Hearing on the appeal shall be held by telephone. If the ALJ determines that an in – person appearance is required to ensure a fair hearing, he or she may arrange for a party to appear in person. Denial of an in-person hearing request by an ALJ may be appealed to the Commissioner in writing within five days of the denial. The decision of the Commissioner shall be final.

Notice of hearing shall be mailed to all interested parties at least six days before the date of hearing.

The notice of hearing shall give the docket number of the case, address of the claimant(s) and employer involved, the date and time of the hearing, and the issues to be considered on the appeal.

J. Special Notice Required:

Whenever an appeal involves the questions as to whether the services were performed by the claimant in employment or for an employer, the ALJ shall give notice of such issue and the pendency of the appeal to the employing unit concerned, as well as to all interested parties, and such employing unit shall thenceforth be an interested party to such appeal.

K. Non-Participation of Parties, Continuances:

If a party fails to participate in a hearing before the ALJ, the ALJ shall nevertheless proceed with the hearing; the ALJ shall review the file and record and question any party, and other witnesses who may be present.

The ALJ may continue or reopen a hearing for good cause, and shall use his or her best judgement as to when a continuance or reopening of a hearing shall be granted. Notice of time and place of the reconvening of the hearing shall be given by the ALJ to the parties or their representatives.

L. Hearing Before ALJ:

All hearings before an ALJ shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and passed upon. The interested parties may present such evidence as may be pertinent. The ALJ may examine or cross-examine all parties and witnesses.

All parties and witnesses shall testify under oath or affirmation. Hearsay evidence shall be allowed; however, any objection to hearsay evidence shall be

noted by the ALJ and addressed in the ALJ's written decision. Notes taken by the claims adjudicator shall also be allowed into evidence, subject to the same hearsay objection, and shall be addressed in the ALJ's written decision.

The parties and their representatives will be provided with any relevant documentary evidence prior to the hearing. They may examine or cross-examine any other party and the witnesses, and explain or rebut any evidence.

Where a party is not represented by counsel or other agent the ALJ shall advise said party of his or her rights, aid the party in examining and cross-examining witnesses, and give the party every assistance compatible with the impartial discharge of the ALJ's duties. The ALJ may take such additional evidence as is deemed necessary, provided that where additional evidence is so taken, the parties shall be given an opportunity of examining, cross-examining, and refuting such evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made a part of the record.

Following the conclusion of a hearing the ALJ shall without undue delay, render and issue a decision. The decision shall be in writing and shall be signed by the ALJ. It shall set forth the findings of fact with respect to the appeal, the reasons for the decision, and the decision. A copy of the decision shall be mailed or delivered to each party to the appeal, including the Unemployment Insurance and Wages Division.

All testimony produced at the hearing shall be recorded by the ALJ but need not be transcribed unless the decision is appealed to the Employment Security Board. No participant in the appeal hearing is permitted to record the proceedings. The Commissioner may review audio recordings of hearings at any time.

RULE 14. BENEFIT APPEAL RULES PERTAINING TO THE BOARD

A. Disqualification of a Board Member:

A member of the Board shall voluntarily disqualify himself or herself and withdraw from any proceeding in which he or she cannot afford a fair and impartial hearing or consideration or in which he or she has an interest. Any party to a proceeding may request the disqualification of a member of the Board by filing an affidavit stating with particularity the grounds upon which it is claimed that a fair and impartial hearing or consideration cannot be or has not been accorded or that a member of the Board has or had an interest in the proceeding. The issue raised by the request shall be determined by the other members of the Board.

Any action taken on a challenge to the interest shall be made part of the record

of the proceedings and notice thereof given the challenging party.

B. Initiation of Review by the Board on a Motion of Commissioner:

Upon the initiation by the Commissioner, on his or her own motion, of a review by the Board of a decision of the ALJ of a benefit determination as provided in 21 V.S.A., Section 1349, the Board shall allow the parties an opportunity to be heard before it within ten (10) days notice thereof to all parties interested.

C. Appeal from Decision of the ALJ:

1. Method of Filing: A party appealing from a benefit decision of the ALJ shall, within 30 calendar days of the date of the decision, file an appeal with the Board at the Department of Labor. The appeal may be submitted: 1) by U.S. mail to the Department of Labor; 2) by e-mail or other electronic method approved by the Commissioner; 3) by facsimile, or 4) in person at any office of the Department of Labor.
2. Form of Appeal: Any written notice that sufficiently identifies the appellant and that may be construed as an appeal, filed as above prescribed and within the prescribed period, shall be deemed to initiate an appeal from such decision.
3. Execution of Appeal: With the exception of appeals filed by e-mail or other electronic method approved by the Commissioner, the notice of appeal shall be signed by the party appealing or his or her authorized agent. If a notice of appeal is signed by the authorized agent of the appellant the name of the appellant shall be set forth in the appeal document followed by the signature of the authorized agent.
4. Acknowledgment of Appeal: A written acknowledgment of the notice of appeal shall be mailed by the Board to the parties interested in the decision which is being appealed.
5. Multiple Appeal: In the event of an appeal from a decision of the ALJ involving more than one claimant on the same issue, the appeal may be filed by the individual claimants or on their behalf by an authorized representative who shall, together with the appeal, submit a list containing the names, and addresses of all claimants, parties to the appeal.

D. Notice and Place of Hearing Before the Employment Security Board

Upon the scheduling of any hearing before the Board, notice specifying the time and place of hearing shall be mailed at least ten (10) days before the date of the hearing, to all interested parties to the appeal. Hearings before the Board shall

be held at Montpelier, Vermont or at such other place as the Board may designate. The Board may continue a hearing to a later date upon request of a party, if the Board finds good cause for such continuance, and if the Board finds that a continuance will not unduly prejudice the non-requesting party.

E. Hearing on Appeal to Board:

Except as otherwise provided by this rule all appeals to the Board shall be heard upon evidence in the record made before the ALJ.

In the hearing of an appeal on the record by the Board, parties may present oral and written argument or both. Parties are encouraged to submit any written argument to the Board at least 24 hours in advance of the hearing. No written argument will be accepted later than the close of the hearing.

The Board may direct the ALJ to take additional evidence necessary for the proper disposition of the appeal. Such evidence shall be taken by the ALJ in the manner prescribed for the conduct of hearings on appeals before him or her. Upon completion of the taking of such additional evidence, the ALJ shall, at the Board's direction, either issue a new decision, or return the complete record involved in the appeal to the Board for its decision thereon.

F. Decision of the Board:

Following the conclusion of a hearing on an appeal, the Board shall, within a reasonable time, announce its decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Board who heard the appeal. It shall set forth the findings of fact of the Board, its conclusions thereon, its ruling of law, and its decision.

If a decision of the Board is not unanimous the decision of the majority shall control. The minority may file a dissent setting forth the reasons for failure to agree with the majority. Copies of any decision of the Board shall be promptly mailed or delivered to all interested parties.

Within 30 days of the Board's issuance of any order, a party may move the Board to reopen and reconsider that order. Such motions shall be granted only upon a showing of plain error, fraud, or newly discovered evidence.

RULE 15. WITNESS FEES AND MILEAGE

Upon affidavit of a witness, stating the number of days he has attended and the amount of mileage to which he is entitled, the ALJ or the Chair of the Board before whom the witness was called to testify, shall certify as to the attendance of the witness and the amount of the witness fees to which he or she is entitled. Fees paid a witness shall be in accordance with 21 V.S.A. 1352.

No witness fees or mileage shall be allowed a witness appearing at any hearing who has not been subpoenaed.

RULE 16. CONSOLIDATIONS

When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual the same time and place for considering each claim may be fixed, hearings thereon are jointly conducted, a single record of the proceedings made and evidence introduced with respect to one proceeding considered as introduced in the others, provided, that in the judgement of the Board or the ALJ before whom the hearing is held, such consolidation would not be prejudicial to any party.

RULE 17. STIPULATIONS

The parties to an appeal, with the consent of the ALJ, or the Board, as the case may be, may stipulate in writing, or for the record at the hearing, as to the admitted facts. The ALJ or the Board, as the case may be, may dispense with the taking of evidence and the hearing of testimony and decide the claim on the basis of such stipulated admitted facts or may take such further evidence as is deemed necessary to determine the matter.

RULE 18. NOTICE OF BENEFIT DECISIONS AND APPEAL RIGHTS

Each notice by a representative of the Commissioner, an ALJ or the Board, which is required to be furnished of a determination or decision on a claim for benefits shall, in addition to stating the determination or decision and the reasons therefor, include a notice specifying the parties' appeal rights. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the determination or decision and the period within which the appeal may be taken.

RULE 19. INVESTIGATIONS

Whenever in the course of an appeal, it develops that investigation, inquiry, payroll audit, or other examination is necessary to aid in the determination of the case, the ALJ or the Board may request such investigation, inquiry, payroll audit, or other examination to be made through the Unemployment Insurance and Wages Division. Hearings on appeal shall be continued or adjourned pending receipt of the report of such investigation, inquiry, audit, or examination. The right to be informed of and to inspect and rebut such reports and to conduct cross examination as to such evidence is preserved to all interested parties to the appeal.

RULE 20. WITHDRAWAL OF APPEALS

An appeal may be withdrawn by an appellant provided, however, that the withdrawal of an appeal, whether by stipulation or otherwise, shall always be within the discretion of

the ALJ or the Board before whom the appeal is pending.

RULE 21. TRANSCRIPT FURNISHING

Upon request, any interested party to an appeal from the decision of the ALJ or the Board shall be furnished without charge, with a copy of the transcript of the proceedings held before the ALJ or the Board. Under no circumstances will a copy of the audio recording be provided to either party. A party may, within the time frame allowed by Rule 14. C., make arrangements to listen to the audio recording at the central office of the Vermont Department of Labor.

RULE 22. PROCEDURE ON ASSESSMENT APPEALS

The Commissioner, upon receipt of a petition for hearing on assessment, shall refer the appeal to an ALJ who shall set the same for hearing and notify the petitioner and other interested parties by first class mail of the time and place of such hearing at least ten days prior to the date set.

Except as herein otherwise provided and except as provided in 21 V.S.A. Sections 1331 and 1332, the procedure set forth in Rules 13 through 19 relating to benefit appeals shall be substantially followed whenever pertinent and applicable in the hearing and disposition of assessment appeals.

RULE 23. PROCEDURE ON APPEAL FROM ADMINISTRATION DETERMINATIONS

The Commissioner upon receipt of an employing unit's petition for a hearing on an administrative determination affecting its rate of contributions, its right to adjustments or refund of contributions paid, its coverage as an employer, or its termination of coverage, shall refer the appeal to an ALJ who shall set the same for hearing and notify the petitioner and other interested parties by first class mail of the time and place of such hearing at least ten days prior to the date set.

Except as herein otherwise provided and except as provided in 21 V.S.A., Section 1337a, the procedures set forth in Rules 13 through 19 relating to benefit appeals shall be substantially followed whenever pertinent and applicable in the hearing and disposition of appeals from such administrative determinations.

RULE 24. DISCLOSURE OF INFORMATION

- A. Information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or federal government as provided in 21 V.S.A. §1314 or other applicable law. Prior to any release of information the agency seeking the information shall agree to a memorandum of understanding that will, at a minimum, include:

1. The purpose for which the request is made;
 2. The specific information needed;
 3. The names and position of all officials who will have access to the information;
 4. Methods and timing of the requests for information, including the format used, and the period of time needed to furnish the requested information, and the names and positions of all officials authorized to request the information;
 5. Provisions for determining appropriate reimbursement for the costs incurred in providing information, including developmental costs associated with furnishing data to the requesting agencies and monitoring safeguards to protect the information;
 6. A description of the safeguards used to ensure the information obtained from the Department will be protected against unauthorized access or disclosure.
- B. Reports and/or publications utilizing confidential data from the Department will be provided to the Commissioner for review and comment prior to release to the general public.
- C. Information collected under contract or agreement with the US Bureau of Labor Statistics, including employer name, address, operational description and employment data, is subject to the confidentiality requirements of federal law. The Commissioner may authorize the sharing of employer specific information with other state agencies as permitted by 21 V.S.A. § 1314 or other applicable law provided it has been successfully screened by US Bureau of Labor Statistics supplied software. Information that does not pass the confidentiality criteria of the US Bureau of Labor Statistics cannot be released to anyone. The Commissioner will decide the feasibility of supplying such information based on the staff time available and the current workload of the Department.

**RULE 25. APPROVAL OF TRAINING COURSE OR PROGRAM AND
ADDITIONAL TRAINING BENEFITS**

- A. This Rule shall govern the administration of Training Course or Program requests as they relate to the approval of training requirements set forth in 21 V.S.A. Section 1343(a)(3).
- B. Definitions:

1. An otherwise eligible claimant, for the purposes of 21 V.S.A. Section 1343(b) is a person who meets the requirements set forth in Section 1343 except for the requirements of subsection (a) (3) relating to the availability and active search for work.
2. "Training course or program" as used in this rule means
 - (a) Occupational or technical training that upon successful completion employers and determined prior to training. Basic education courses, however, which are necessary as a prerequisite for skill training, may also be approved.
 - i. Except during periods when the Extended Benefit Program is triggered "on" in accordance with 21 V.S.A. Section 1421, the term "training" does not include programs of instruction in a secondary school, where the individual is enrolled as a regular full-time student, intended to lead toward a secondary school diploma.
 - (b) Training conducted by an agency, educational institution, or employing unit which has been approved by the Vermont Department of Education to conduct training programs. Provided, however, that any agency, educational institution, or employing unit which is not subject to regulation and approval by the Department of Education may be approved by the Commissioner.
 - (c) Training directed to a high demand occupation.
 - (d) The Commissioner shall also consider if the training course or program is being:
 - i. Offered by an employing unit that is other than the employing unit training workers for positions in its own establishments; or
 - ii. Funded under the Workforce Investment Act.
3. Declining Occupation: A declining occupation is one whose total number, as measured by the Occupational Statistics (OES), has declined over the last two surveys and is projected to continue to decline.
4. High Demand Occupation: A high demand occupation is one that is projected by the Department of Labor to have higher than average openings statewide than all occupations or have a higher-than-average

growth rate.

C. Approval of Training Course or Program

A training course or program may be approved for an individual when the Commissioner determines, as a primary requisite, that

1. The individual was indefinitely separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of permanent reduction of operations at the individual's place of employment, and
2. The individual is unemployed and is unable to obtain employment through core and intensive services and has been determined by workforce development division staff to be in need of training services and has the skills and qualifications to successfully complete the selected training program, and
3. Suitable work in the individual's usual occupation does not exist or the demand for such is substantially diminished. Usual occupation shall mean the type of work for which the individual has current skills and which is most reasonably related to the individual's work experience and qualifications.

D. Method of Making Application for Approval – Any claimant who desires approval of training shall make a written application to the Commissioner setting out the following:

1. The individual's most recent employer, his or her occupation with such employer, reason he or she is no longer employed by the employer, and the last date worked for the employer;
2. The nature of the training or retraining course he or she is attending or intends to attend;
3. The name of the training facility or of the employing unit providing the training or retraining;
4. The beginning and ending date of the training or retraining course;
5. The type of jobs for which the claimant will qualify at completion of such training.

E. Individuals receiving unemployment benefits shall, upon request, provide the unemployment insurance division with evidence of satisfactory progress in the

training program.

- F. Denial of training course or program approval for a claimant by the Commissioner shall be final. However, any claimant who disagrees with a denied approval may request within 30 days of such denial a review by the Commissioner.

RULE 26. ADDITIONAL TRAINING BENEFITS

- A. This rule shall govern the administration of Additional Training Benefits (ATB) provided under 21 V.S.A. Section 1471.
- B. Definitions:
 - 1. ATB: Additional training benefits (ATB) consist of up to 26 weeks of benefits available to an individual who has exhausted all benefits available under 21 V.S.A. 1340 (regular benefits) and any other federally funded unemployment compensation or trade act benefits and is enrolled in and making satisfactory progress in an approved training course or program.
 - 2. Approved Training Program: For the purposes of ATB an approved training program consists of one that:
 - (a) Is funded through the Workforce Investment Act of 1998, or
 - (b) Is approved by the Commissioner or the Commissioner's designee; and
 - (c) Is preparing a UI claimant for entry into a high-demand occupation.
 - 3. Declining Occupation: A declining occupation is one whose total number, as measured by the Occupational Employment Statistics (OES), has declined over the last two surveys and is projected to continue to decline.
 - 4. High Demand Occupation: A high demand occupation is one that is projected by the Department of Labor to have higher than average openings statewide than all occupations or have a higher-than-average growth rate.
- C. Payment of Additional Training Benefits
 - 1. ATB will be granted to an individual who:
 - (a) Was separated from a declining occupation, or who was involuntarily and indefinitely separated from employment as the

result of a permanent reduction in operations at the individual's place of employment.

- (b) Filed an initial claim for ATB no later than the end of the initial benefit year or within three months following the exhaustion of all other benefit entitlements, whichever is later.
 - (c) Prior to the end of his or her last benefit year, was enrolled and making satisfactory progress in a training course or program.
 - (d) Is not receiving a similar stipend or other allowance for non-training related expenses.
2. ATB will be paid at the same rate as the maximum weekly benefit amount determined on the claimant's most recent eligible benefit year, for up to 26 weeks for week(s) claimed within one year of establishing the initial ATB claim.

D. Employer Experience Rating:

The experience rating of employers who have paid base-period wages in the most recent eligible year will be charged for ATB at the same percentage associated with the payment of regular benefits in the applicable year. The liability to experience rated and reimbursable employers for benefit charges associated with ATB will be treated and handled the same as charges associated to an unemployment payment made under the regular state unemployment program. Employers subject to be charged for a share of ATB will be notified in writing of the ATB initial claim and their percentage of liability.

E. Relationship to Other Rules:

Rules, procedures, policies and statutes associated with an unemployment payment made under the regular unemployment compensation program shall apply to ATB recipients.

RULE 27. PENALTY WEEKS

As prescribed under 21 V.S.A. Section 1347, claimants who have been found to commit fraud in filing claims for benefits, who have not been prosecuted, shall be assessed one penalty week for each week such fraud was committed, provided that the claimant has not been found to commit fraud within the past three calendar years. Claimants found to have committed fraud within the past three calendar years, and who have committed fraud again, will be assessed two weeks for each week such fraud was committed. Claimants will not be assessed more than 26 penalty weeks in any one benefit year. Any claimant who is found

otherwise eligible for benefits within three years of penalty weeks being assessed will have each week of benefit entitlement applied against his or her penalty week balance. The monetary value of each claim applied against the penalty week balance will be deducted from the maximum benefit amount in the benefit year such claim is filed.

RULE 28. CLAIMANTS WITH DISABILITIES

A claimant with a disability who is utilizing the assistance of any state agency, including but not necessarily limited to the Division of Vocational Rehabilitation, may be relieved from the requirement to actively seek employment during the period in which the agency is working with the claimant and/or on his or her behalf to help the claimant prepare for and secure new employment. The approval of the Manager of the Unemployment Insurance Claims Center is required in such cases.

RULE 29. COST SHIFTING OF AN EMPLOYER'S EXPERIENCE RATING

- A. The following rule shall govern the administration of Vermont's State Unemployment Tax Avoidance (SUTA) system, as required under V.S.A. 21, Section 1325(d).
- B. Process
 - 1. On a daily basis, any new employer accounts being established will be cross matched against the existing employer data base to detect potential common ownership. The SUTA Dumping detection system, which will also pick up the potential transfer of employees where there may not be common ownership, will be run on a quarterly basis. Both of these systems will be the Department's main source of detecting potential SUTA dumping situations, which may have occurred within the past 12 completed calendar quarters, from the date of detection.
 - 2. When an employer transfers all or any portion thereof of its trade or business to another employer, where at the time of the transfer there is substantial common ownership, management, or control of the two employers, the employment experience rating attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred.
- C. Definitions
 - 1. "Trade or business" includes the employer's workforce and does not require an acquisition or sale. Trade or business also includes reorganizations or restructuring where the only significant difference is that

all or any portion of the employees are being paid or reported by a different entity.

2. "Substantial common ownership, management or control" is defined simply as common ownership, management, or control, which could include one manager that exercises pervasive control as the chief executive officer of both companies.

RULE 30. PENALTIES FOR EMPLOYEE MISCLASSIFICATION AND FALSE STATEMENT

A. This Rule shall govern the assessment of penalties for employee misclassification and false statement as provided for by 21 V.S.A. §1314a (f)(1)(B) and 21 V.S.A. § 1369. This Rule shall also govern the period of time an employer is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions as a result of employee misclassification. Any such penalties shall be in addition to any assessment for unpaid contributions and interest payments owed pursuant to 21 V.S.A. § 1329 and § 1330.

1. In assessing a misclassification penalty, the Commissioner shall adhere to the following guidelines.
 - (a) An initial violation shall subject the employer to a penalty of \$100.00 for each improperly classified employee, or a penalty equal to 100% of the unpaid unemployment insurance contributions owed the department as a result of the improper classification, whichever amount is greater, not to exceed \$5,000.00 per employee.
 - (b) A second violation within a period of three years of the previous violation shall subject the employer to a penalty of \$500.00 for each improperly classified employee, or a penalty equal to 500% of the unpaid unemployment insurance contributions owed the department as a result of the improper classification, whichever amount is greater, not to exceed \$5,000.00 per employee.
 - (c) A third or subsequent violation within a period of three years of the most recent violation may subject the employer to a penalty of \$5,000.00 for each improperly classified employee.

In assessing a penalty under this section, the Commissioner shall consider any relevant mitigating factors, including but not limited to, good faith or excusable neglect.

2. In addition to the penalties listed in subsection 1. above, the Commissioner shall prohibit an employer found to be in violation of 21 V.S.A. § 1314a(f)(1)(B) from contracting, directly or indirectly, with the state or any of its subdivisions, for up to three years.
 - (a) Any prohibition from contracting with the state shall only be made following consultation with the Commissioner of Buildings and General Services or the Secretary of Transportation, or other agencies as appropriate.
 - (b) An administrative determination shall be issued to advise the employer of the debarment period and the employer's appeal rights.
 3. In establishing a debarment period under this section, the Commissioner may consider any relevant mitigating factors, including but not limited to, good faith, excusable neglect, or public health and safety.
 - (a) An initial violation shall subject the employer to a debarment period of up to one year.
 - (b) A second violation within a period of three years of the previous violation shall subject the employer to a debarment period of up to two years.
 - (c) A third or subsequent violation within a period of three years of the most recent violation shall subject the employer to a debarment period of up to three years.
- B. Violation of 21 V.S.A. § 1369, making a material false statement or representation, either on one's own behalf or on behalf of another.
1. An initial violation shall subject the person to a penalty of \$2,500.00.
 2. A second or subsequent violation within a period of three years shall subject the person to a penalty of \$5,000.00.

RULE 31. ALTERNATE METHOD OF PAYING EMPLOYER CONTRIBUTIONS

Upon the base of contributions required by subsection (b) of 21 V.S.A. Section 1321 becoming greater than \$16,000.00, an eligible employer may elect to pay the first quarter contribution in installments within a calendar year. If an employer misses a payment, the entire contribution amount shall become immediately due, and the employer shall also pay any penalties and interest that the department prescribes.

- A. An employer will be eligible to pay their first quarter contribution in installments only if all of the following criteria are met:
1. The employer has paid all contributions due the department in a timely manner for the previous three calendar years;
 2. The employer has incurred 50 percent or more of its tax liability in the first quarter of the preceding calendar year;
 3. The employer's tax liability in the first quarter of the requesting year is projected to be at least 50 percent greater than in the first quarter of the preceding year;
 4. The employer applies for the installment payment option by February 30; and
 5. The employer files and pays all quarterly reports online.
- B. An eligible employer who participates in the installment payment option shall pay 50 percent of their first quarter liability by April 30. The remaining 50 percent may be spread out over the remaining 8 months, to result in payment in full by December 31. Interest on the remaining balance will accrue monthly at a rate set by the commissioner on January 1 of each year. The interest rate shall be equal to the federal unemployment trust fund borrowing rate, as established by 42 USCA § 1322(b)(4).