

**DEPARTMENT OF LABOR****Employment and Training Administration****20 CFR Part 625**

RIN 1205-AA50

**Disaster Unemployment Assistance Program; Interim Final Rule; Request for Comments**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Employment and Training Administration of the Department of Labor is issuing this interim final rule, effective upon publication, amending 20 CFR 625.6 to remove restrictive provisions, provide a more equitable weekly assistance amount to individuals unemployed as a result of a major disaster, and to clarify and simplify the States' administration of the Disaster Unemployment Assistance Program. To provide an opportunity for public participation in this rulemaking, a comment period is provided, and a final rule will be published after taking into account any comments that are received.

**DATES:** *Effective date:* The effective date of this interim final rule is May 11, 1995.

*Comment date:* Written comments on this interim final rule must be received in the Department of Labor on or before July 10, 1995.

**ADDRESSES:** Written comments on this interim final rule may be mailed or delivered to Mary Ann Wyrsh, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Avenue, NW., Washington, DC 20210.

All comments received will be available for public inspection during normal business hours in Room S4231 at the above address.

Copies of this interim final rule are available in the following formats: electronic file on computer disk and audio tape. They may be obtained at the above office.

**FOR FURTHER INFORMATION CONTACT:** Robert Gillham, Group Chief, Federal Programs Group, Division of Program Development and Implementation, Office of Program Management in the Unemployment Insurance Service at the address listed under **ADDRESSES**: Telephone (202) 219-5312 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 410(a) of The Robert T. Stafford Disaster

Relief and Emergency Assistance Act (hereafter the "Stafford Act") (42 U.S.C. 5177) sets forth the outlines of the Disaster Unemployment Assistance Program (hereafter the "DUA Program"). The President is authorized by section 410(a) of the Stafford Act to provide to any individual unemployed as a result of a major disaster declared by the President under the Stafford Act "such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation \* \* \* or waiting period credit." Other terms of section 410(a) provide that disaster unemployment assistance (hereafter "DUA") is to be furnished to individuals for no longer than 26 weeks after the major disaster is declared; and that for any week of unemployment of DUA payment is not to exceed the maximum weekly benefit amount (hereafter "WBA") authorized under the unemployment compensation (hereafter "UC") law of the State in which the disaster occurred.

Pursuant to a delegation of authority (51 FR 4988, Feb. 10, 1986) to the Secretary of Labor from the Director of the Federal Emergency Management Agency (hereafter "FEMA"), the DUA Program authorized by section 410(a) of the Stafford Act is implemented in regulations promulgated by the Department of Labor (hereafter "Department") and published at part 625 of title 20 of the Code of Federal Regulations.

The amendments made by this interim final rule are applicable for all major disasters declared on and after its effective date.

**Summary of Major Provisions/ Amendments to § 625.6**

First, the amendments retain the current provisions of § 625.6(a)(1) to utilize earnings from employment or self-employment in a base period to compute a DUA WBA. However, new § 625.6(a)(2) provides that for purposes of a DUA WBA computation, the most recent tax year that has ended will be considered as the base period to be utilized in computing a DUA WBA under § 625.6(a)(1). Only in certain circumstances does a tax year coincide with the State law base period, which, under the current provisions, requires the projection of net income by the individual for certain periods, which may not be accurate.

Second, under new § 625.6(a)(3), adult family members employed or self-employed as a family unit or in the same self-employment business or trade

will be treated equally in allocating wages from such employment or self-employment where all performed services. Under the current provisions, income may be allocated only to one individual because of the manner in which the family was paid or based on the manner which a tax return was filed even though all adult individuals in the family may have participated in the employment or self-employment. This will permit DUA to be paid to each adult family member who participates in a family business.

Third, the up to four-step process to compute a DUA WBA under §§ 625.6(a)(2) through (5) is eliminated. It is replaced with new § 625.6(b) to pay 50 percent of the average weekly UC amount as the DUA WBA to all individuals who worked full-time but have insufficient wages to compute a weekly amount under § 625.6(a)(1), or are entitled to a DUA WBA less than 50 percent of the average weekly UC amount as computed under the basic computation method in § 625.6(a)(1). The payment of 50 percent of the average weekly UC amount as a minimum DUA WBA (with certain adjustments) is a significant increase in the DUA WBA for many affected workers. Currently, the minimum DUA WBA is generally the minimum UC weekly amount; however, in certain cases where earnings are less than the minimum amount needed to qualify under the State UC law, the DUA WBA may be computed at less than the State UC minimum amount under the current provisions of § 625.6(a)(3). In these cases, individuals are often not eligible for DUA because of the limitation imposed by the application of § 625.6(a)(5) that the DUA WBA may not exceed 70 percent of the individual's average weekly wage.

Fourth, newly added § 625.6(b)(1) provides that adjustments will be made to reduce the minimum DUA WBA determined in accordance with § 625.6(b) for workers employed part-time prior to the date they became unemployed due to the major disaster. However, if the DUA WBA computed under § 625.6(a)(1) is higher than the reduced DUA WBA computed under paragraph (b)(1), the higher amount shall be paid.

Fifth, while the above provisions address the calculation of an individual's DUA WBA based on employment and wages earned *prior* to the disaster, new § 625.6(f)(1) provides that wages earned *after* the disaster may reduce the DUA payments for the weeks in which those wages were earned. If an individual earns wages in a week during which DUA is claimed, the amount

payable for that week is the DUA WBA reduced in accordance with the earnings allowance provisions of the applicable State law. This is the same provision that was previously set forth at § 625.6(d). However, new § 625.6(f)(2) provides that gross earnings received from the self-employment business during a week by a self-employed individual will be deducted only during the week received. No longer will there be a projection of future income to be deducted on a pro rata basis from each week's benefits, which often disqualified individuals from receiving any DUA.

Sixth, newly added § 625.6(e) provides that an immediate determination of a DUA WBA will be made based on the applicant's statement of wages and employment or self-employment, or a combination of the applicant's statement and documentation to support the employment or self-employment and wages, or State agency records. However, if the determination is based on the individual's statement only, the individual must provide evidence of employment or self-employment or wages within 21 calendar days. Failure to do so will result in a denial of DUA. Section 625.6(e) also provides for certain adjustments to the DUA WBA if partial information is submitted by an individual within 21 days and for a later adjustment when necessary documentation to support a redetermination is submitted.

#### **Background—Basis for Amendments**

The weekly amount computation methodology set forth in section 625.6, *Disaster Unemployment Assistance: Weekly Amount*, was last revised and published in the **Federal Register** as a final rule on September 16, 1977 (42 FR 46712). The section was amended, however, by an interim final rule published in the **Federal Register** on January 5, 1990 (55 FR 550) and confirmed in a final rule published in the **Federal Register** on May 16, 1991 (56 FR 22800) only to incorporate the amended definition of "State" set forth in amended § 625.2(p). At the time of the 1977 final rule, the current section 410 of the Stafford Act was section 407 of the Disaster Relief Act of 1974 (hereafter "DRA"). The Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100-107, November 23, 1988) redesignated section 407 as section 410 and the short title of the DRA was changed to the Stafford Act. Among the amendments to section 407 included in the newly designated section 410 were the deletion of a provision that provided that the weekly

DUA amount would be reduced by the amount of any UC available to the individual, and the addition of the provision that if an individual is eligible for UC, such individual is not eligible for DUA. This former provision provided the basis for the methods of the computation of a weekly DUA amount under § 625.6. At the time the interim final rule was confirmed in the May 16, 1991, final rule, the Department was not aware of any problems with the States' administration of § 625.6 or of any inconsistencies in the weekly amounts of DUA paid. Therefore, no amendments were made to the computation methodology provided in the section.

The Department's most recent guidance to the States for administering the provisions of § 625.6 for unemployed self-employed individuals was set forth in Unemployment Insurance Program Letter (hereafter "UIPL") No. 35-87, issued August 25, 1987. The UIPL contained several key instructions. First, a self-employed individual did not have to be totally unable to perform customary services in self-employment as a direct result of the disaster in order to be eligible for DUA, but could be determined eligible if he/she were partially unemployed, where there was a substantial reduction in the customary services that could be performed each week as a direct result of the disaster. Second, the DUA WBA for an unemployed self-employed individual would be computed under § 625.6 based on the net earnings shown on the individual's Federal income tax return for the year preceding the beginning date of the disaster. Third, reductions from the DUA WBA for partial or part-total unemployment, as provided in § 625.6(d), would be based on net earnings. Fourth, such net earnings for a week would be determined by the individual filing an affidavit stating what his/her anticipated net earnings would be for the taxable year in which the disaster occurred, and such net earnings would be prorated to a fixed weekly amount and deducted from the DUA WBA in accordance with the earnings allowance applicable under State law. If the individual projected no net earnings, no reduction would occur. If the prorated net earnings equaled or exceeded the weekly amount of DUA payable, application of the State law earnings allowance provisions prevented the individual from being eligible for any DUA payments even where the individual was only partially employed a few hours each week. Fifth, if more than one family member claimed DUA

based on the same self-employment business, each individual's self-employment income had to be supported by the previous year's Federal tax return showing separate SE schedules, and if a husband and wife operated the business as a partnership, there would have to exist a form 1065 filed with the IRS and a schedule K-1 to show how the partnership income or loss was to be allocated, in order for both individuals to be eligible for DUA. Simply filing a joint tax return was not sufficient for purposes of determining DUA entitlement for all family members.

The Department's recent experience with the DUA Program pointed out unnecessary complexities, inconsistencies and problems with certain provisions in § 625.6 and the implementing instructions in UIPL No. 35-87. This experience stemmed from several major disasters declared from 1993 to 1994. These major disasters were: the Midwest States which were declared major disaster areas due to flooding occurring during the late spring and summer of 1993; the Northridge, California area earthquake in January, 1994; the March, 1994, major disasters declared in several Southeastern States due to severe storms and flooding; and most recently, the salmon fishing disaster beginning in May, 1994, in California, Oregon and Washington. Principally, these unnecessary complexities, inconsistencies, and problems arose from: the diversity of occupations and unemployment situations for thousands of unemployed individuals, particularly the unemployed self-employed; the unavailability of individuals' tax and business records because they were lost due to the disasters, except for the salmon fishers; and the fact that many thousands of individuals were partially unemployed as a result of the disasters.

The current DUA regulations at § 625.6(a) provide an up to 5-step process to compute a DUA WBA: (1) Determine a WBA based on earnings (net income for the self-employed) during the State's UC base period and then apply the State's UC benefit formula; (2) if the amount determined under (1) is less than the average amount of UC paid in the State, and a higher amount can be determined based on the individual's average weekly wage for the 13-week period immediately preceding the date of the disaster, the higher amount will be the DUA WBA; (3) if an amount cannot be computed under (1), then the weekly wage earned or that would have been earned in employment or self-employment in the 13-week period preceding the date of

the disaster is utilized; (4) if, under (1) or (3), it is impossible to compute a WBA for a self-employed individual because there were not net earnings, the individual is entitled to the minimum UC WBA paid in the State; (5) any amount computed under (2) or (3) may not exceed 70 percent of the individual's average weekly wage, and if the result is a WBA less than the minimum paid in the State, the individual is ineligible for DUA.

For the self-employed, as provided in UIPL No. 35-87, and for some workers, using steps (2) or (3) requires a projection of income. This problem is compounded for the self-employed, in that net income is for a year and has to be divided by 52 to determine net earnings for the 13-week period.

In addition to the complexities of the current computation, there are inconsistencies. One inconsistency arises in computing a DUA WBA for individuals (workers or self-employed) who have minimal wages versus a self-employed individual with no wages (net income). Under § 625.6(a)(4), an unemployed self-employed individual with no net income (and who meets other eligibility requirements) is entitled to the minimum WBA under State law. But § 625.6(a)(5) provides that a weekly amount determined under § 625.6(a) (2) or (3) (which provide for alternate methods of calculation based on earnings in a 13-week period) must not exceed 70 percent of the average weekly earnings of the individual in the 13-week period prior to the individual's unemployment, and if the application of this limitation results in a weekly amount less than the minimum UC weekly amount, the individual is not eligible for DUA. Therefore, if a wage earner or self-employed individual has \$1.00 in wages up to the minimum UC qualifying amount during the 13-week period, he/she is usually not entitled to DUA, because the 70 percent limitation imposed by § 625.6(a)(5) often causes the individual to be ineligible for DUA. As a result, an individual with minimal wages may not be eligible for DUA, but a self-employed individual with no wages is entitled to DUA.

Another inconsistency arises under the provisions of §§ 625.6 (b) and (c) (computations for the South Pacific island jurisdictions, which are defined as "States" under § 625.2(p)) when compared to the computation methodology under §§ 625.6(a) (3) and (4). Paragraphs (b) and (c) provide for a uniform DUA WBA equal to the average UC weekly amount paid under all State UC laws or another uniform amount that is determined at the time of the disaster. Therefore, the weekly amount paid in

the South Pacific island jurisdictions is significantly higher than what is paid to a self-employed individual with no net income or to an individual with minimal earnings in the rest of the States. The amendments made by this interim final rule will not, however, entirely eliminate the inconsistency of paying a higher weekly DUA amount to claimants in the South Pacific island jurisdictions. This problem is further discussed below.

Inconsistencies also arise under § 625.6(d) in computing reductions from the WBA for partial and part-total employment during a week for the self-employed. Section 625.6(d) provides that a reduction will occur for wages earned during the week by applying the wages and earnings allowance for partial and part-total employment prescribed under the State UC law. Under the instructions in UIPL No. 35-87, if a self-employed individual resumes some of his/her customary self-employment activities, a projection must be made of the individual's self-employment net income for the year taking into account any losses due to the disaster which will adversely affect the farmer's future income. This is because the self-employed often perform services for their income year round, but may receive actual income only once or twice a year.

Net income for the self-employed farmer must include any projected or actual payments received for crop insurance proceeds or disaster relief paid by the U.S. Department of Agriculture (hereafter "USDA") because such payments are considered income for Federal income tax purposes and are paid in lieu of being able to fully harvest a crop for income. This annualized figure is divided by 52 to determine the weekly income, and this weekly income figure is deducted from the DUA WBA. If the self-employed individual projects no net income, no deduction is made.

In many cases, the computed deductible amount is equal to or greater than the WBA; therefore, no DUA is payable even though the individual may have been able to work only a few hours each week. On the other hand, a wage earner working less than full-time may receive a full or partial DUA weekly payment since all State UC laws permit a certain amount of income to be earned before any deduction is made from the WBA.

The Department realized, as a result of the Midwest floods, the California earthquake, the Southeast floods, the salmon fishing disaster, and the thousands of partially unemployed self-employed individuals affected by them, that the provision in § 625.6(d) requiring

a reduction for wages earned and its position (as set forth in UIPL No. 35-87) that a self-employed individual must project net income is overly complex and may contribute to the improper payment or denial of DUA. A self-employed individual's projected net income is often only an "estimate" that may or may not be accurate. Such an "estimate" may result in an improper payment to a self-employed individual determined eligible or an improper denial of DUA to an individual determined not eligible.

Accordingly, the Department has consulted with FEMA and USDA and solicited comments on proposed changes to the regulations from the States. The majority of the States commented that the simplification of the weekly monetary computation, in order to remove or reduce the inequities described above, should have priority. The Department, FEMA and USDA considered the comments and the Department has incorporated many of the States' specific comments in the amendments to § 625.6 described below, such as the payment of 50 percent of the average UC amount as the minimum DUA amount and elimination of the current provisions in §§ 625.6(a) (2) through (5). The Department concurs that the amendments should have priority and should be implemented as rapidly as possible.

#### **Changes to 20 CFR 625.6**

Section 625.6 is amended in its entirety as set forth and discussed below.

The heading of § 625.6 is amended to read, *Weekly Amount; Jurisdictions; Reductions*, which reflects the contents and provisions of the section more accurately than the current heading.

Section 625.6(a) provides that the weekly amount of DUA for all States, except the South Pacific island jurisdictions, shall be the same as computed under the State UC law for regular compensation and the amount so computed shall not exceed the maximum WBA for UC authorized under the applicable State law. This is the same provision as is currently in the first part of § 625.6(a)(1). However, the amendments add three new paragraphs to § 625.6(a) that clarify and simplify the computations made under this section and reduce or eliminate the potential for improper DUA payments or fraudulent applications.

Newly added paragraph (a)(1) reads nearly the same as the *proviso* in current paragraph (a)(1). That is, the amended regulation continues to provide that in computing an individual's DUA WBA, the qualifying employment and wage

requirements of the applicable State UC law and the benefit formula of the applicable State UC law shall be applied, except for computations as provided under new paragraphs (a)(2) or (b) (discussed below). The State UC law base period is no longer applicable.

In addition, the provision, in current paragraph (a)(1), that wages "shall not include employment or self-employment, or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law" is retained. For clarification, and as an example of the application of this provision, new paragraph (a)(1) cites section 3304(a)(14)(A) of the Federal Unemployment Tax Act (hereafter "FUTA") (26 U.S.C. 3304(a)(14)(A)) as one of the Federal law provisions which is included in this exclusion. The Department's long-standing position on the administration of this FUTA provision as it relates to services performed by an alien is set out in UIPLs No. 1-86 (51 FR 10102, August 20, 1986), 12-87 (54 FR 10102), 12-87, Change 1 (54 FR 10113) and 6-89 (54 FR 10116), all published on March 9, 1989. The Department's position and applicability of section 3304(a)(14)(A), FUTA, to the DUA Program was also set forth in the preamble to the DUA final rule published May 16, 1991 (56 FR 22800).

Newly added paragraph (a)(2) provides that for all individuals, whether they are self-employed, or are individuals with a combination of income from self-employment and remuneration for services performed for another, or are wage earners only, the base period to be utilized to determine the DUA WBA shall be the most recent tax year that has ended for the individual prior to the individual's unemployment that was a direct result of the major disaster. The reasons for this amendment are as follows.

Most State UC laws provide that the base period utilized in determining monetary entitlement for a UC claim is the first four of the five completed calendar quarters preceding the filing quarter. Therefore, if an individual becomes unemployed in April, May, or June, the base period is the prior calendar year, which, for individuals, is also a tax year. If an individual becomes unemployed in a later quarter in the current year, it results in a different base period which, for some individuals, means that a projection of income has to be made for the quarters outside the most recent tax year. This will result in a projection which may or may not be accurate. An individual who became unemployed in the January-March

quarter would have to provide information from a tax year prior to the most recent calendar year in order for the State agency to properly compute a DUA WBA. In addition, the tax year for certain self-employed individuals, depending on filing status, is different than a calendar year. This causes additional problems when projecting income for a State UC law base period.

Therefore, in order to reduce errors by eliminating income projections and provide a more easily administered provision, the Department has determined that the most recently completed tax year for the individual preceding the individual's unemployment that was a direct result of the major disaster will be the base period to be utilized in computing the DUA WBA, rather than the State UC law base period.

The self-employment income to be considered wages (as defined in § 625.2(u)) shall be all the net income that was reported on the tax return that was dependent on the performance of services in all self-employment. This provision eliminates problems that occurred where the net income reported on the individual's tax year return for the year preceding the beginning date of the disaster under the instructions in UIPL No. 35-87 did not coincide with the State UC law base period. The individual's projection of net income for the periods outside the tax year may not have included all self-employment net income from services performed in two or more businesses, but only the net income from those businesses affected by the disaster. This may have limited State agency use of base period self-employment in computing a DUA WBA. This inconsistency could occur because § 625.2(t) defines "unemployed self-employed individual" as an individual who was self-employed in or was to commence self-employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon that self-employment, and whose unemployment is caused by a major disaster.

Inclusion of all net income derived from the performance of services in all self-employment parallels the inclusion of all wages earned in covered employment by wage earners on a State UC claim and in covered and noncovered employment on a DUA claim by an unemployed worker, and is in accordance with the provisions of § 625.6(a)(1). Using all net income from the performance of all services in self-employment will lessen the burden on State agency personnel to perform analytical activities more associated

with income tax auditors in attempting to split out income from one business when reviewing tax returns or other business records. Base period (tax year) income from sources not requiring the performance of services, such as interest, dividends, and capital gains from the sale of investments (or stock portfolios) is not to be included for self-employed individuals, just as it is not included as wages in determining entitlement to UC, since no services are performed. Since these sources of income are reported separately on the tax return, their exclusion from base period income is not difficult.

However, any net income during the tax year base period derived from the business, such as income derived when a self-employed farmer receives crop insurance or disaster relief payments for the loss of a crop, is income that must be included. This is because such payments are made in lieu of income that would have been received from the harvest of the crops.

Inclusion of all net income from the performance of services in self-employment derived from any business carried on by such individual follows the definition of "net earnings from self-employment" in section 1402(a) of the Internal Revenue Code of 1986 (26 U.S.C. 1402(a)).

The Department also recognizes that some individuals may not have completed their tax returns at the time of their unemployment due to the major disaster; however, such individuals will be entitled to a DUA WBA determined in accordance with paragraph (e)(3) of this section, discussed below.

In addition, the Department recognizes that to utilize wages in the most recently completed tax year for the individual preceding the individual's unemployment as a direct result of the major disaster as the base period for computing a DUA WBA under § 625.6(a) could result in the use of wages not representative of the income an individual is currently receiving at the time his/her unemployment begins. The most recently completed tax year base period may result in some individuals receiving a lower DUA WBA than if more current wages were used. However, since all individuals who are fully employed or self-employed prior to their unemployment as a direct result of the major disaster will, at a minimum (unless reduced for disqualifying income or because of pre-disaster partial employment or partial self-employment), receive 50 percent of the average State UC weekly amount as their DUA WBA, they will receive a reasonable DUA WBA that will permit them to temporarily provide for their

needs. Therefore, no individual will suffer significant harm. Also, the most recently completed tax year base period provision was established in the interest of simplifying the administration of the DUA Program and reducing or eliminating the potential for determining an incorrect or improper DUA WBA.

The Department, however, invites interested parties to suggest provisions that would use more recent wages in an alternate base period where this would provide a higher DUA WBA than the use of wages in the most recently completed tax year. Specifically, comments are requested on what would be an appropriate alternate base period without having to utilize income projections and in which the wages (net income for the self-employed) could be easily substantiated by the individual and easily verified by the State agency.

Newly added paragraph (a)(3) of this section provides a rule for the allocation of income in cases where several family members work in a business. It provides that, as of the date of filing an initial application for DUA, if family members who are over the age of majority, as defined under the statutes of the applicable State, were customarily or routinely employed or self-employed as a family unit or in the same self-employment business prior to the date the individuals became unemployed as a direct result of the major disaster, the wages from such employment or net income from self-employment shall be allocated equally among such adult family members for purposes of computations of the DUA WBA. There is an exception provided. If the documentation substantiating employment or self-employment and wages from such employment or self-employment, submitted in accordance with new § 625.6(e), justifies a different allocation, it will be used rather than the equal allocation.

The Department recognizes that in many self-employment ventures adult members of a family, particularly husbands and wives, may jointly own the business or trade and share equally in performing services resulting in the success or failure of the business, yet may never have formally entered into a partnership or filed form 1065 or schedule K-1, which reflects the distribution of income, with the Internal Revenue Service as part of their tax return. Therefore, the Department concludes that to restrict the allocation of income only to those situations where a partnership exists, as proven by the schedule K-1, is overly restrictive and has prevented the payment of DUA to individuals otherwise entitled.

In addition, the Department recognizes that in certain occupations, particularly in agriculture, it is common for family members to work as a unit for an employer, yet only one member of the family is paid by the employer. The family member that is paid then divides the wages between the other family members or uses such wages to provide for all the family members' needs and expenses. Paragraph (a)(3) clarifies the Department's position that all adult family members who performed services should be treated equally in the allocation of income for purposes of computing a DUA weekly amount.

The term "family," as used for purposes of determining a DUA WBA, is not limited to the traditional family of husband, wife, and children, but includes any family members related by blood, adoption, or marriage who customarily work as a family unit.

However, the Department also recognizes that members of a family under the age of majority often perform services in employment and self-employment for family units or family businesses, particularly in the agricultural industry. Such employment or self-employment is usually performed during periods such individuals are not attending school and may be full-time during vacation or between term periods, and part-time or not at all during times that school is in session. The fact that such individuals are under the age of majority does not, in itself, mean these individuals are not entitled to DUA. These individuals would be entitled to DUA if they meet the definition of unemployed worker or unemployed self-employed individual at §§ 625.2 (s) and (t) and the eligibility requirements for a week of unemployment in § 625.4.

For these reasons, paragraph (a)(3) also provides that, for purposes of computing a DUA WBA for an individual under the age of majority, the actual wages earned or received during the base period in employment or self-employment are utilized, rather than an equal allocation of the wages as provided for family members over the age of majority.

The Department also recognizes that in many family businesses, particularly in the agricultural industry, individuals under the age of majority may not be paid wages as payment for services that are performed, but may be paid an allowance or receive a percentage of the proceeds resulting from a product or livestock that is sold. Therefore, such individuals may not have any tax returns, bank accounts, or other business records to support their statement of employment and earnings,

as would the business owner or employer. Such individuals may provide an affidavit from an adult family member, which is duly certified before an official, such as a notary public, or have the adult family member provide a signed statement, under penalty of perjury, to a State agency representative, substantiating that they performed services and received the amount of the allowance or proceeds as payment. If the individuals have other documentation substantiating their employment, the affidavit or adult family member statement is not necessary. In these cases, the State agency must give careful consideration to whether the individual meets the definitions of "unemployed worker" or "unemployed self-employed individual" in §§ 625.2 (s) and (t), respectively.

Newly added § 625.6(b) provides that if the DUA weekly amount computed under paragraph (a) for an individual is less than 50 percent of the average weekly payment of regular UC paid in the State, or if an individual has insufficient or no wages in the base period to compute a DUA weekly amount, the individual shall be entitled to a weekly amount equal to 50 percent of the average weekly UC payment in the State. Any individual whose weekly DUA amount is determined under paragraph (b) must submit documentation to substantiate employment or self-employment, or wages paid or earned for such employment or self-employment, or documentation to substantiate that the disaster prevented planned commencement of employment or self-employment. Such documentation must be submitted within 21 calendar days from the date of application for DUA. If such individual fails to provide such documentation, he/she will be denied DUA.

This provision provides a significant increase in the minimum DUA amount payable (in most cases, from the minimum payable under the State UC law to 50 percent of the average payable). In addition, it reduces the inconsistency between the DUA weekly amount established for the South Pacific island jurisdictions (as discussed previously) and the other States. Elimination of the inconsistency is discussed below. A remaining inconsistency is that the South Pacific island jurisdictions use a uniform weekly DUA amount, while the other States treat the proposed DUA minimum as a floor that can be exceeded if justified by prior earnings. In addition, newly added § 625.6(b) also ensures that individuals having minimal

earnings (\$1.00 up to the minimum needed to qualify under the State UC law), or no wages (no net income in the case of the self-employed), will be entitled to a weekly DUA amount.

The Department has determined that to set the minimum weekly DUA amount at 50 percent of the average weekly UC amount paid in a State is sufficient to permit unemployed individuals to temporarily provide for the necessities of living. Workers whose prior wages justify a higher weekly DUA amount will receive more, up to the State's maximum weekly amount for regular compensation. Most State UC laws establish the weekly UC amounts based on a percentage of the average weekly wage paid in the State, taking into consideration the labor force, geography and other factors unique to the State. Therefore, the Department has determined that a minimum DUA payment in a State equal to 50 percent of the average UC weekly amount paid in the State is an amount that will allow for the temporary needs of unemployed individuals to provide for certain necessities of living, which, as discussed below, may be reduced for individuals who are customarily or routinely employed or self-employed less than full-time.

Section 625.6(b)(1) provides that if an individual was customarily or routinely employed or self-employed less than full-time prior to his/her unemployment as a direct result of the major disaster, such individual's weekly amount shall be determined based on the percentage of time the individual was employed or self-employed compared to the customary and usual hours per week that would constitute full-time employment or self-employment in the occupation. The State agency will determine what constitutes full-time employment based on information requested from the applicant and State agency records or occupational and labor market information. An exception is provided if an individual employed or self-employed less than full-time has base period earnings that would result in the computation of a DUA WBA under paragraph (a) that is less than 50 percent of the average UC weekly amount but is greater than the DUA WBA computed under paragraph (b)(1). In this case, the individual will be paid the higher weekly amount.

The purpose of this provision is to prevent payment of 50 percent of the average UC weekly amount to an individual who was employed or self-employed less than full-time prior to the major disaster. This provision prevents an individual from receiving a DUA WBA exceeding the wages received for

such employment or self-employment. The Department recognizes, and FEMA and the State agencies have also expressed concern, that if the minimum DUA weekly amount is too high, it works as a disincentive for the individual to seek and return to work. For example, assume a college student works 20 hours per week at the hourly wage of \$4.25 for a weekly wage of \$85.00. This individual becomes unemployed as a direct result of a major disaster, and is dependent upon the employment as his/her principal source of income and livelihood. If the minimum DUA weekly payment (50 percent of the average UC payment) is \$90.00 per week in the State, such amount exceeds the weekly wages for his/her employment. Therefore, if 40 hours per week is considered full-time employment for the occupation by the State agency, the individual's DUA weekly amount would be established at \$45.00 (20 hours is 50 percent of 40 hours, and 50 percent of \$90.00 equals \$45.00). That amount is a more equitable income replacement for the services performed and provides an income to the individual in the same kind of relationship to the income received from the job, as a full weekly amount is to the income received by an individual who worked full-time.

Section 625.6(b)(2) provides that if the DUA WBA computed under paragraph (b)(1) is not an even dollar amount, the amount will be rounded in accordance with the rounding provisions for regular UC under the applicable State law.

Sections 625.6 (c) and (d) are redesignated from current paragraphs (b) and (c) and otherwise remain unchanged. These paragraphs provide for determining the DUA WBA for the South Pacific island jurisdictions. The provisions of newly added paragraphs 625.6 (e) and (f) (discussed below) also are applicable to individuals filing for DUA in those South Pacific island jurisdictions.

The Department is considering issuing a notice of proposed rulemaking, which would propose two amendments to § 625.6 to reduce the DUA WBA in the South Pacific island jurisdictions. One amendment would provide that the DUA WBA established under § 625.6(c) for Guam and the Commonwealth of the Northern Mariana Islands would be more akin to the amount determined under paragraph (b) for the remainder of the States (i.e., 50 percent of the average weekly UC amount paid in each State). For the remainder of the jurisdictions at § 625.6(d), the DUA WBA would remain at 50 percent of the area-wide average of weekly wages paid to individuals in those jurisdictions. Amending § 625.6 in

accordance with the above proposal would eliminate the inconsistency of unemployed workers in Guam and the Commonwealth of the Northern Mariana Islands receiving a higher DUA WBA than many unemployed workers in the other States.

The second proposed amendment would set forth in § 625.6(b)(1) that an individual in any South Pacific island jurisdiction would be subject to a reduction to his/her determined DUA WBA if he/she were employed or self-employed less than full-time prior to his/her unemployment as a direct result of the major disaster. The reason for including South Pacific islanders under § 625.6(b)(1) is to achieve consistency and uniformity across jurisdictions.

The Department has decided not to provide for the above amendments in this interim final rule because to do so would reduce benefits to some individuals in the South Pacific island jurisdictions, should a major disaster be declared, without notice and an opportunity for comments prior to the effective date of the rule, which is the date of publication.

Newly added § 625.6(e) sets forth that the State agency shall immediately determine a DUA WBA under the provisions of paragraphs (a) through (d) based on the individual's statement of employment or self-employment and the wages earned or paid for each employment or self-employment. In addition, an immediate determination of a DUA WBA will be made if, at the time of filing for DUA, the individual submits documentation substantiating employment or self-employment or wages earned or paid for such employment or self-employment, or if the State agency has records of employment or self-employment and wages earned or paid. An immediate determination shall also be made based on the individual's statement or in conjunction with the submittal of documentation in those cases where the individual was to commence employment or self-employment on or after the date the major disaster began but was prevented from doing so as a direct result of the major disaster.

Section § 625.6(e)(1) provides that if entitlement is based only on the individual's statement, the individual must furnish documentation to substantiate such employment or self-employment and/or wages earned or paid for such employment or self-employment. In addition, documentation must be submitted in those cases where the individual was to commence employment or self-employment at the time of the disaster, but was prevented from commencing it

as a direct result of the major disaster. The documentation must be submitted within 21 calendar days of the filing of the DUA initial application.

Section § 625.6(e)(2) provides that if an individual fails to submit, within 21 days, sufficient documentation to establish that he/she was employed or self-employed in the major disaster area prior to his/her unemployment as a direct result of the major disaster, or was to commence employment or self-employment on or after the date the major disaster began but was prevented from doing so as a direct result of the disaster, the individual shall be ineligible for the payment of DUA for any week of unemployment due to the major disaster. In addition, if the individual received payments of DUA for any weeks of unemployment prior to the date of the determination of ineligibility, such weeks shall be considered overpaid and a determination will be issued establishing the overpayment. The State agency shall also consider whether the individual should be subject to a disqualification for fraudulently filing an initial application for DUA.

The primary purpose for these provisions (§§ 625.6(e)(1) and (e)(2)) is to provide for the prompt payment of benefits to those affected by a major disaster while also protecting against fraudulent claims for DUA. The Department's position is that, given the disruptions caused by a major disaster, it is important to provide financial relief in affected areas as quickly as possible. It also is necessary to be sure that benefits are being paid only to those who are eligible for them. Thus, the regulations provide for the quick determination and payment of benefits based on the applicant's representation. Once conditions have stabilized, however, it is reasonable to require documentation substantiating that an individual meets the eligibility conditions, *i.e.*, was employed or self-employed or was to commence employment or self-employment in the disaster area at the time he/she became unemployed as a direct result of the major disaster. The documentation to prove employment or self-employment would not have to consist of detailed income data, such as income tax records or W-2 forms, which may have been lost or destroyed because of the disaster, but could, for example, simply consist of a statement from a bank that the individual had a business account or an account with payroll deposit, or a copy of a title or deed to property, or any other simple evidence that could easily be obtained within 21 days. In those cases where an individual was to

commence employment or self-employment, the documentation could simply consist of a statement from the employer indicating the date employment was to start or when a self-employment contract for services was to start.

Section 625.6(e)(3) provides that, for purposes of DUA WBA computed under paragraph (a), if an individual submits documentation to verify his/her employment or self-employment within 21 calendar days of the filing of the initial application for DUA, but not documentation to support his/her statement of wages earned or paid during the base period, the DUA WBA shall be immediately redetermined in accordance with the provisions in paragraph 625.6(b). This includes those instances where an individual has not filed a tax return for the most recent tax year that has ended.

The purpose of paragraph (e)(3) is to ensure that if an individual has stated that he/she has earnings that result in a computation of a weekly DUA amount higher than 50 percent of the average UC amount paid in the State, the individual must support the statement by providing documentation of his/her earnings within a reasonable time. This rule will prevent a significant amount of incorrect or improper payments from occurring and prevent a large overpayment from being established against the individual. The Department views 21 calendar days as a reasonable time frame for the individual to contact sources and obtain acceptable proof of income. Examples of acceptable forms of proof are bank records, employer statements of earnings, income tax preparer copies of documents, and State and/or Federal income tax returns.

An individual who planned to commence employment or self-employment but was prevented because of the major disaster would have to produce the same forms of proof as other individuals if the individual had base period employment. However, the Department recognizes that many individuals who were about to commence employment or self-employment may not have had any employment prior to the date of unemployment. Such individuals could only be determined entitled to a weekly amount under the provisions of paragraph (b) of this section. The Department also recognizes that these individuals may have expected to have had earnings that would have resulted in a DUA WBA higher than 50 percent of the average UC weekly amount, had they been included in a base period. However, the Department's position is that there is no basis to project what the

individual might have received in future earnings and apply such amount to the base period utilized for computations under § 625.6(a). There is no assurance the individual would have the earnings projected for various reasons such as closure of the business or termination from employment, or, in the case of the self-employed, business expenses may exceed projections, or income may not result as planned. In other words, individuals who were prevented from commencing employment or self-employment have not proven the same attachment to the workforce as have individuals who were employed or self-employed prior to their unemployment as a direct result of the major disaster. Therefore, the payment of 50 percent of the average UC weekly amount to an individual who had no income prior to the employment or self-employment he/she was to commence is reasonable.

If an individual fails to submit proof within 21 days, the State agency generally would not have processed more than three weeks of payments of DUA at the higher amount; hence, any overpayment established as a result of the recomputation would be minimal and could be more readily offset against future amounts payable, causing minimal hardship to the individual. Conversely, the applicant's records submitted within 21 calendar days may result in the individual being entitled to a higher DUA WBA and an adjustment must be made for the underpaid weeks. This rule will also provide such individuals with a steadier income stream.

Section 625.6(e)(4) provides that if an individual has had his/her DUA WBA redetermined in accordance with paragraph (e)(3) because the required wage documentation was not submitted within 21 calendar days, such individual may have his/her DUA WBA redetermined upon submittal of documentation prior to the end of the disaster assistance period to substantiate that the wages earned or paid during the base period would be sufficient to compute a DUA WBA higher than was redetermined under paragraph (b). This provision will benefit all individuals who were unable to obtain and submit base period wage documentation within 21 days. This provision will particularly accommodate those individuals who had not filed a tax return at the time of application for DUA by allowing such individuals up to 26 weeks to submit a copy of a tax return filed for the most recent tax year. Any higher weekly amount determined would be applicable to all weeks for which the individual was eligible for the payment of DUA.

Newly added § 625.6(f)(1) sets forth, for partial and part-total unemployed workers and unemployed self-employed individuals, the current methodology that is prescribed in § 625.6(d) for reducing the weekly amount of DUA payable. It requires that the weekly amount of DUA payable shall be reduced (but not below zero) by the amount of wages earned in that week as determined by applying to such wages the earnings allowance for partial or part-total employment prescribed in the applicable State UC law for partial or part-total employment by individuals received regular UC.

Newly added § 625.6(f)(2) provides that the weekly DUA amount payable to an unemployed self-employed individual shall also be reduced (but not below zero) by the full amount of any income received during the week that was based on the performance of services in self-employment by applying the earnings reduction allowance provided in paragraph (f)(1). Paragraph (f)(2) also provides that, notwithstanding the definition of "wages" at § 625.2(u), the term "any income" for purposes of this paragraph means gross income.

The basis for the reductions in paragraph (f)(2) of this section derive from the fact that the definition of a "week of employment" for an unemployed self-employed individual at § 625.2(w)(2) does not take into consideration that in the case of many self-employed, particularly farmers, all income for year round performance of services may be paid in one or two weeks. The instructions in UIPL No. 35-87 attempted to reconcile the problem by having the individual project his/her net income for the year, then prorate such amount to each week and deduct the amount from the DUA WBA for each week claimed. The result of this, as discussed previously, was that, in many cases, the projected prorated weekly amount exceeded the DUA WBA and the individual received no DUA, even though such individual was unemployed and had no income from any source.

The Department believes it is far more equitable, and will provide weekly DUA payments to a greater number of individuals, to deduct from the DUA WBA the gross earnings received during a week that were or are derived from the performance of services in self-employment, than to attempt to have the individual determine or project net earnings for a year from the income and then prorate such annual figure to each week.

Application of this new provision means, for example, in the case of a

farmer, that if the farmer sold some product(s) during a week and received \$30,000.00 in gross income, the individual would be ineligible for DUA for that week only, and then he/she could continue to receive DUA in subsequent weeks provided the eligibility requirements of § 625.4 are met. However, if the net income for tax purposes to be derived from the \$30,000.00, plus any additional projected net income to be received during the tax year, were prorated to 52 weeks and deducted from the amount of DUA payable, it may mean the individual is not entitled to any DUA for any week because of excessive earnings each week. Likewise, if a self-employed individual performed services prior to becoming unemployed due to the major disaster and is receiving monthly installment payments of, for example, \$50.00, such amount would be deducted from the DUA WBA during the week received.

The Department recognizes that application of the reduction provisions in paragraph (f)(2) of § 625.6 will result in no reduction being made for weeks of unemployment after the individual's unemployment as a direct result of the major disaster where the individual performs less than full-time self-employment but has no income during the week. Therefore, the Department is considering issuing a notice of proposed rulemaking, which would amend § 625.6 to reduce the DUA WBA based on the hours an individual performed less than full-time services in self-employment during the week compared to the individual's usual or customary full-time hours performing services. This amendment is not being made in this interim final rule because self-employed individuals affected by such an amendment would receive less benefits without opportunity for comment prior to the effective date of this rule should a major disaster be declared.

#### **Publication in Interim Final; Effective Date**

The Department has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for publishing the amendments to 20 CFR 625.6 as an interim final rule with a post-publication comment period, because a pre-publication comment period is impracticable and contrary to the public interest. It is impractical because major disasters continue to occur, which means that thousands of individuals will again be unemployed and applying for DUA if areas in the States or entire States are declared major disaster areas by the President. To not have the

regulations in place at that time would be contrary to the public interest because of the inconsistencies and unduly restrictive provisions in the current regulations. In addition, there is little likelihood that the majority of any potential beneficiaries will object to the changes since they provide more equitable and, in most cases, greater benefits.

For all of the reasons stated above, the Department has determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists for making the amendments to 20 CFR 625.6 effective upon publication in the **Federal Register**. Such amendments are applicable to all major disasters declared by the President on or after the date of publication and will, therefore, cover any major disaster in the spring or summer. Historically, these are the seasons of the year when most major disasters occur because of the prevalence of severe storms, floods, tornadoes, and hurricanes.

#### **Drafting Information**

This document was prepared under the direction and control of the Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 219-7831 (this is not a toll-free number).

#### **Classification—Executive Order 12866**

The interim final rule in this document is classified as a "significant regulatory action" under Executive Order 12866 on Federal Regulations. It may: (1) Materially alter the budgetary impact of entitlements or the rights and obligations of recipients thereof; or (2) raise novel legal or policy issues arising out of legal mandates and the President's priorities. It is not likely to result: (3) in having an annual effect on the economy of \$100 million or more; or (4) create a serious inconsistency or interfere with action taken or planned by another agency.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, approval has been obtained from the Office of Management and Budget (OMB) for the recordkeeping and reporting requirements under 20 CFR 625.16(a) for the DUA forms ETA 90-2, 81, 81A, 82, 83, and 84. The OMB control number for the 90-2 is 1205-0234, and for the 81, 81A, 82, 83, and 84 it is 1205-0051. OMB approval has also been obtained for the recordkeeping and reporting required under 20 CFR



625.19(b) under OMB control number 1205-0051.

### Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not \* \* \* have a significant economic impact on a substantial number of small entities" (5 U.S.C. 605(b)). The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States. Since these regulations involve an entitlement program administered by the States, and are directed to the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

### Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17. 225, "Disaster Unemployment Assistance (DUA)."

### Lists of Subjects in 20 CFR Part 625

Disaster Unemployment Assistance, Labor, Reemployment services, Unemployment compensation.

Signed at Washington, DC, on May 4, 1995.

**Doug Ross,**

*Assistant Secretary of Labor.*

For the reasons set out in the preamble, part 625 of title 20, Code of Federal Regulations, is amended as set forth below.

## PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

1. The authority for part 625 continues to read as follows:

**Authority:** 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4988); Secretary's Order No. 4-75 (40 FR 18515).

2. Section 625.6 is revised to read as follows:

### § 625.6 Weekly amount; jurisdictions; reductions.

(a) In all States, except as provided in paragraphs (c) and (d) of this section, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment. In no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week.

(1) Except as provided in paragraph (a)(2) or (b) of this section, in computing an individual's weekly amount of DUA, qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied; and for purposes of this section, employment, wages, and self-employment which are not covered by the applicable State law shall be treated in the same manner and with the same effect as covered employment and wages, but shall not include employment or self-employment, or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law, such as, but not limited to, section 3304(a)(14)(A) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(14)(A)).

(2) For purposes of paragraph (a)(1) of this section, the base period to be utilized in computing the DUA weekly amount shall be the most recent tax year that has ended for the individual (whether an employee or self-employed) prior to the individual's unemployment that was a direct result of the major disaster. The self-employment income to be treated as wages for purposes of computing the weekly amount under this paragraph (a) shall be the net income reported on the tax return of the individual as income from all self-employment that was dependent upon the performance of services by the individual. If an individual has not filed a tax return for the most recent tax year that has ended at the time of such individual's initial application for DUA, such individual shall have a weekly amount determined in accordance with paragraph (e)(3) of this section.

(3) As of the date of filing an initial application for DUA, family members over the age of majority, as defined under the statutes of the applicable State, who were customarily or routinely employed or self-employed as a family unit or in the same self-employment business prior to the individuals' unemployment that was a direct result of the major disaster, shall have the wages from such employment or net income from the self-employment allocated equally among such adult family members for purposes of computing a weekly amount under this paragraph (a), unless the documentation to substantiate employment or self-employment and wages earned or paid for such employment or self-employment submitted as required by paragraph (e) of this section supports a different allocation. Family members under the age of majority as of the date of filing an initial application for DUA shall have a weekly amount computed

under this paragraph (a) based on the actual wages earned or paid for employment or self-employment rather than an equal allocation.

(b) If the weekly amount computed under paragraph (a) of this section is less than 50 percent of the average weekly payment of regular compensation in the State, as provided quarterly by the Department, or, if the individual has insufficient wages from employment or insufficient or no net income from self-employment (which includes individuals falling within paragraphs (a)(3) and (b)(3) of § 625.5) in the applicable base period to compute a weekly amount under paragraph (a) of this section, the individual shall be determined entitled to a weekly amount equal to 50 percent of the average weekly payment of regular compensation in the State.

(1) If an individual was customarily or routinely employed or self-employed less than full-time prior to the individual's unemployment as a direct result of the major disaster, such individual's weekly amount under this paragraph (b)(1) shall be determined by calculating the percent of time the individual was employed or self-employed compared to the customary and usual hours per week that would constitute the average per week hours for year-round full-time employment or self-employment for the occupation, then applying the percentage to the determined 50 percent of the average weekly amount of regular compensation paid in the State. The State agency shall utilize information furnished by the applicant at the time of filing an initial application for DUA and any labor market or occupational information available within the State agency to determine the average per week hours for full-time employment or self-employment for the occupation. If the weekly amount computed for an individual under this paragraph (b)(1) is less than the weekly amount computed under paragraph (a) of this section for the individual, the individual shall be entitled to the higher weekly amount.

(2) The weekly amount so determined under paragraph (b)(1) of this section, if not an even dollar amount, shall be rounded in accordance with the applicable State law.

(c) In the Territory of Guam and the Commonwealth of the Northern Mariana Islands, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the average of the payments of regular compensation made under all State laws referred to in § 625.2(r)(1)(i) for weeks of total unemployment in the first four of

the last five completed calendar quarters immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

(d) In American Samoa, Federated States of Micronesia, Republic of the Marshall Islands and the Trust Territory of the Pacific Islands, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the amount agreed upon by the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco), and the Federal Coordinating Officer, which shall approximate 50 percent of the area-wide average of the weekly wages paid to individuals in the major disaster area in the quarter immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

(e) The State agency shall immediately determine, upon the filing of an initial application for DUA, a weekly amount under the provisions of paragraphs (a) through (d) of this section, as the case may be, based on the individual's statement of employment or self-employment preceding the individual's unemployment that was a direct result of the major disaster, and wages earned or paid for such employment or self-employment. An immediate determination of a weekly amount shall also be made where, in conjunction with the filing of an initial application for DUA, the individual submits documentation substantiating employment or self-employment and wages earned or paid for such employment or self-employment, or, in the absence of documentation, where any State agency records of employment or self-employment and wages earned or paid for such employment or self-employment, justify the determination of a weekly amount. An immediate determination shall also be made based on the individual's statement or in conjunction with the submittal of documentation in those cases where the individual was to commence employment or self-employment on or

after the date the major disaster began but was prevented from doing so as a direct result of the disaster.

(1) In the case of a weekly amount determined in accordance with paragraph (e) of this section, based only on the individual's statement of earnings, the individual shall furnish documentation to substantiate the employment or self-employment or wages earned from or paid for such employment or self-employment or documentation to support that the individual was to commence employment or self-employment on or after the date the major disaster began. In either case, documentation shall be submitted within 21 calendar days of the filing of the initial application for DUA.

(2) Any individual who fails to submit documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment in accordance with paragraph (e)(1) of this section, shall be determined ineligible for the payment of DUA for any week of unemployment due to the disaster. Any weeks for which DUA was already paid on the application prior to the date of the determination of ineligibility under this paragraph (e)(2) are overpaid and a determination shall be issued in accordance with § 625.14(a). In addition, the State agency shall consider whether the individual is subject to a disqualification for fraud in accordance with the provisions set forth in § 625.14(i).

(3) For purposes of a computation of a weekly amount under paragraph (a) of this section, if an individual submits documentation to substantiate employment or self-employment in accordance with paragraph (e)(1), but not documentation of wages earned or paid during the base period set forth in paragraph (a)(2) of this section, including those cases where the individual has not filed a tax return for the most recent tax year that has ended, the State agency shall immediately redetermine the weekly amount of DUA payable to the individual in accordance with paragraph (b) of this section.

(4) Any individual determined eligible for a weekly amount of DUA under the provisions of paragraph (e)(3) of this section may submit necessary

documentation to substantiate wages earned or paid during the base period set forth in paragraph (a)(2) of this section, including those cases where the individual has not filed a tax return for the most recent tax year that has ended, at any time prior to the end of the disaster assistance period. A redetermination of the weekly amount payable, as previously determined under paragraph (b) of this section, shall immediately be made if the wages earned or paid for services performed in employment or self-employment reflected in such documentation is sufficient to permit a computation under paragraph (a) of this section of a weekly amount higher than was determined under paragraph (b) of this section. Any higher amount so determined shall be applicable to all weeks during the disaster assistance period for which the individual was eligible for the payment of DUA.

(f)(1) The weekly amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of partial or part-total unemployment shall be the weekly amount determined under paragraph (a), (b), (c) or (d) of this section, as the case may be, reduced (but not below zero) by the amount of wages that the individual earned in that week as determined by applying to such wages the earnings allowance for partial or part-total employment prescribed by the applicable State law.

(2) The weekly amount of DUA payable to an unemployed self-employed individual for a week of unemployment shall be the weekly amount determined under paragraph (a), (b), (c) or (d) of this section, as the case may be, reduced (but not below zero) by the full amount of any income received during the week for the performance of services in self-employment, regardless of whether or not any services were performed during the week, by applying the earnings allowance as set forth in paragraph (f)(1) of this section. Notwithstanding the definition of "wages" for a self-employed individual under § 625.2(u), the term "any income" for purposes of this paragraph (f)(2) means gross income.

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