

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

McGinley

IRRC Number:

1978

(1) Agency

Department of Labor & Industry  
Bureau of Workers' Compensation

(2) I.D. Number (Governor's Office Use)

12-53 *AK*

(3) Short Title

Special Funds Assessments Final-Form Rulemaking

(4) PA Code Cite

34 Pa. Code, Chapter 121

(5) Agency Contacts & Telephone Numbers

Primary Contact: Richard A. Himler, Director, BWC  
(717) 783-5421

Secondary Contact:

(6) Type of Rulemaking (Check One)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120 Day Emergency Certification Attached?

No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language

This final-form rulemaking provides the mechanism to implement section 2218 of Act 57 of 1997 (71 P.S. § 578), which requires that assessments be collected "through" insurers rather than imposed "on" insurers. In addition, the final-form rulemaking provides changes necessary for effective operation of the Subsequent Injury Fund, Supersedeas Fund and Workmen's Compensation Administration Fund. The final-form rulemaking also provides for collection of the appropriate assessment amount for the Office of Small Business Advocate.

(9) State the Statutory Authority for the regulation and any relevant state or federal court decisions.

These regulations are submitted under the authority of section 2218 of Act 57 of 1997 and sections 401.1 and 435 of the Workers' Compensation Act (77 P.S. §§ 710, 991).

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**(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.**

The regulation is not mandated by any law, but regulatory action has been made necessary by Section 2218 of Act 57 of 1997, which became effective on July 1, 1998 and states that assessments "shall be imposed, collected and remitted through insurers in accordance with regulations promulgated by the Department of Labor and Industry."

**(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?**

The regulation provides guidance to insurers and employers regarding the Department's procedures for collection of assessments and operation of the Special Funds. Without such guidance, the regulated community would find it difficult to adequately comply with Act 57 of 1997.

**(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.**

Non-regulation would lead to inconsistencies in the amount and manner by which assessments are collected. This would result in either a lack of funding for the Special Funds or an excessive collection by or from insurers. Either of these situations would be deleterious to the general welfare of the Commonwealth.

**(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)**

The insurer and employer communities, which must know how to comply with Act 57 of 1997, and the Commonwealth, which obtains the funds necessary to fulfill its legal obligations through the law and these regulations, will benefit from the regulations. Insurance carriers particularly benefit from Act 57 of 1997 and these regulations by clarifying the role of assessments in other states' tax legislation.

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- (14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)**

These regulations continue a process of assessment collection which existed prior to Act 57 of 1997. These regulations, however, change and clarify the manner in which assessments are collected and paid.

- (15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)**

Over 300 Workers' Compensation Insurance Carriers; all Commonwealth employers subject to the W.C. Act; and the Pennsylvania Rating Bureaus.

- (16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable..**

The Pennsylvania Insurance Federation / The Pennsylvania Compensation Rating Bureau / The Coal Mine Compensation Rating Bureau / The American Insurance Association.

- (17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.**

Pennsylvania insurance carriers may experience savings in taxes levied by other states on workers' compensation premiums collected in Pennsylvania.

# Regulatory Analysis Form

**(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.**

There are no increased costs to these entities caused by the regulation.

**(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.**

An administrative review of the Rating Bureaus' filings with the Insurance Department will be required by the regulations. The costs, however, should be minimal and in accord with current rate filing review procedures.

# Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

|                             | Current FY<br>Year | FY+1<br>Year | FY+2<br>Year | FY+3<br>Year | FY+4<br>Year | FY+5<br>Year |
|-----------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|
| <b>SAVINGS:</b>             |                    |              |              |              |              |              |
| <b>Regulated Community</b>  |                    |              |              |              |              |              |
| <b>Local Government</b>     |                    |              |              |              |              |              |
| <b>State Government</b>     |                    |              |              |              |              |              |
| <b>Total Savings</b>        |                    |              |              |              |              |              |
| <b>COSTS:</b>               |                    |              |              |              |              |              |
| <b>Regulated Community</b>  |                    |              |              |              |              |              |
| <b>Local Government</b>     |                    |              |              |              |              |              |
| <b>State Government</b>     |                    |              |              |              |              |              |
| <b>Total Costs</b>          |                    |              |              |              |              |              |
| <b>REVENUE LOSSES:</b>      |                    |              |              |              |              |              |
| <b>Regulated Community</b>  |                    |              |              |              |              |              |
| <b>Local Government</b>     |                    |              |              |              |              |              |
| <b>State Government</b>     |                    |              |              |              |              |              |
| <b>Total Revenue Losses</b> |                    |              |              |              |              |              |

(20a) Explain how the cost estimates listed above were derived.

The savings to the various insurance carriers cannot be calculated because they are potential reductions in taxes which may be imposed by other states.

Only minor administrative costs will result from changes to the Department's and insurers' billing procedures which may incidentally result from this regulation.

# Regulatory Analysis Form

**(20b) Provide the past three year expenditure history for programs affected by the regulation.**

| Program | FY-3 | FY-2 | FY-1 | Current FY |
|---------|------|------|------|------------|
|         |      |      |      |            |
|         |      |      |      |            |
|         |      |      |      |            |
|         |      |      |      |            |

**(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.**

N/A

**(22) Describe the non regulatory alternative considered and the costs associated with those alternatives. Provide the reasons for their dismissal.**

Non-regulatory alternatives cannot create a legally enforceable standard and are therefore unsuited to the purposes of this regulation.

**(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.**

The Department considered various regulatory methods which calculated assessments based on insurers' paid losses. Discussions with the affected community revealed that such a calculation was not as workable, from an administrative and accounting standpoint, as the use of earned premium calculations.

# Regulatory Analysis Form

**(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

This provision has no comparable Federal equivalent and relates to an area of law not addressed on the Federal level.

**(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

The regulation makes Pennsylvania's assessment procedures more analogous to those used by other states. Pennsylvania will be placed at an improved competitive advantage because of this regulation.

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

Yes, this regulation amends 34 Pa. Code §§ 121.1, 121.22, and 121.23.

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

Meetings will be held as required by the Independent Regulatory Review Commission.

# Regulatory Analysis Form

**(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.**

The changes are described in the attached regulations and are necessary to ensure compliance with Act 57 of 1997.

**(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.**

N/A

**(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?**

The regulation will be effective on publication and shall apply to all assessments issued on or after July 1, 1998. This regulation requires no new licenses, permits or approvals.

**(31) Provide the schedule for continual review of the regulation.**

This regulation will undergo constant review by the Department.



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**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: \_\_\_\_\_  
DEPUTY ATTORNEY GENERAL

DATE OF APPROVAL \_\_\_\_\_

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of Labor & Industry  
(AGENCY)

DOCUMENT / FISCAL NOTE NO. 12 - 53

DATE OF ADOPTION: \_\_\_\_\_

BY: Johnny J. Butler  
Johnny J. Butler  
Secretary

TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY: R. E. Grimaldi

DATE OF APPROVAL 2/18/99

(Deputy General Counsel  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

**FINAL-FORM RULEMAKING**

34 PA. CODE CHAPTER 121

WORKERS' COMPENSATION SPECIAL FUNDS ASSESSMENTS

**FINAL-FORM RULEMAKING**  
**Title 34-Labor and Industry**  
**Part VIII Bureau of Workers' Compensation**  
**Chapter 121**  
**[34 Pa. Code Chapter 121]**

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), by this order, adopts the following amendments to clarify and provide detailed guidance for the uniform application of section 2218 of the act of November 26, 1997 (P.L. 530, No. 57) (77 P.S. § 578) (Act 57 of 1997), as it affects the Pennsylvania Workers' Compensation Act (act), the act of June 2, 1915, P.L. 736 (77 P.S. §§ 1 - 2626). The Department, by this order, amends sections 121.1, 121.22 and 121.23 of Title 34, Chapter 121 (relating to General Provisions) insofar as they address assessments for the Subsequent Injury and Supersedeas funds. In addition, the Department hereby amends chapter 121 by adding sections designed to implement section 2218 of Act 57 of 1997 and refining existing procedures for assessment collection and calculation. These amendments are contemplated and designed to both implement the provisions of section 2218 of Act 57 of 1997 and clarify existing procedures relating to the calculation and collection of assessments for the Subsequent Injury, Supersedeas, and Workmen's Compensation Administration Funds (special funds), as well as the assessment authorized under section 1303 of the act (77 P.S. § 1041.3) for the purpose of funding the operation of the Office of Small Business Advocate.

*Statutory Authority*

These amendments are adopted under the authority of section 2218 of Act 57 of 1997, which provides: “[T]he assessments for the maintenance of the Subsequent Injury Fund, the

Workmen's Compensation Supersedeas Fund and the Workmen's Compensation Administration Fund under sections 306.2, 443 and 446 of the act . . . shall no longer be imposed on insurers but shall be imposed, collected and remitted through insurers in accordance with regulations promulgated by the Department of Labor and Industry." These amendments are adopted under the additional authority of sections 401.1 and 435 of the act (77 P.S. §§ 710 and 991), which provide that the Department will adopt regulations which are necessary or desirable for the explanation and enforcement of the act and which are reasonably calculated to provide interested parties with their rights and obligations under the act.

### *Background*

On November 26, 1997, Governor Tom Ridge signed into law Act 57 of 1997, which amended sections 306.2, 443 and 446 of the act (77 P.S. §§ 517, 999 and 1000.2). The amendment is designed to allow the imposition, collection and remittance of assessments "through" insurers on behalf of employers, rather than the imposition of assessments "on" insurers.

In an effort to streamline the assessment and collection procedures, the Department proposed amendments which were designed to fulfill the legislative directive that this change shall be effected "in accordance with regulations promulgated by the Department of Labor and Industry." These proposed amendments were also designed to further clarify and amend existing sections of chapter 121, and add new sections to implement section 2218 of Act 57 of 1997.

These amendments were published at 28 Pa. B. 4603 on September 5, 1998 in a notice of proposed rulemaking. Therein, the Department invited all interested parties to provide written comments to the Department regarding the proposed rulemaking. In response, the Department

received comments from Timothy L. Wisecarver and Dale W. Broadwater of the Pennsylvania Compensation Rating Bureau (PCRB) and Coal Mine Compensation Rating Bureau (CMCRB) respectively; Samuel R. Marshall, of The Insurance Federation of Pennsylvania; and Keith T. Bateman, of the Alliance of American Insurers. The Department also received written comments from the Independent Regulatory Review Commission (IRRC) by letter dated November 5, 1998.

This notice of final rulemaking supplants and further clarifies and expands upon the previous interpretation of Act 57 of 1997 provided in the notice of proposed rulemaking. In response to comments received, some changes have been made to the previously published proposed rulemaking.

#### *Purpose*

The purpose of these amendments is to implement the provisions of section 2218 of Act 57 of 1997 and to clarify and enforce the provisions of the act which provide for assessments for the special funds and the Office of Small Business Advocate. In addition, these amendments clarify procedures relating to the operation of the special funds.

#### *Affected Persons*

Those affected by these amendments are private and public sector employers in this Commonwealth, workers' compensation insurance carriers, self-insured employers and injured workers.

### *Fiscal Impact*

There is no significant fiscal impact associated with these amendments. These amendments only require modifications to existing forms and do not result in any significant costs to the Commonwealth. Similarly, these amendments have been written to prevent any significant costs to the regulated community associated with their implementation.

### *Response to Comments*

The following addresses the concerns found in the comments received from the public and IRRC.

(1) The PCRB, CMCRB and IRRC have suggested that the term “earned premium,” as defined in section 121.1(b), be refined to exclude coverages which do not relate to the operations of the special funds. The Department agrees. Accordingly, the definition of “earned premium” in section 121.1(b) has been changed to reflect that premium amounts earned on certain types of coverages may not be taken into account in calculating assessments.

(2) The PCRB and CMCRB note that “Special Schedule W,” on which earned premium is reported, is filed not only by individual insurance carriers, but by groups of affiliated insurance carriers, and that the regulations, as proposed, might not permit such a practice. Such a result was not intended by the Department, and, in fact, the Bureau currently classifies assessment accounts by affiliated insurer groups. Therefore, the definition of “insurance carrier” in section 121.1(b) has been amended to expressly include groups of affiliated insurance carriers.

(3) The PCRB and CMCRB note that in some instances, an insurance carrier may report an amount of earned premium that is less than zero. The commentators acknowledge that a formula incorporating negative values would be administratively burdensome and suggest that any negative earned premium amounts be entered into the appropriate formulas as zero. The Department agrees that amounts of earned premium reported as a negative number should be entered into the appropriate assessment formula as zero. Therefore, sections 121.22, 121.23 and 121.31 have been amended accordingly.

(4) The PCRB and CMCRB question the Department's use of different formulas for calculating the Subsequent Injury, Supersedeas and the Administration Funds, and argue that all assessments for the Special Funds should be based upon the same period of time (fiscal year or calendar year) and the same type of information (amount paid / accrued or budget amount). The commentators' suggestions, however, cannot be incorporated into the rulemaking in light of the statutory basis for the assessments. The relevant statutory authority for each assessment defines the appropriate time period and informational basis for each assessment, and the Department is bound to adhere to the criteria set forth by the legislature. As stated in the act, assessments for the Administration Fund are due on or before January 31 of each year (77 P.S. § 1000.2). Similarly, notice of assessment for the Supersedeas Fund is to be provided on or before June 30 of each year with payment due within 30 days of such notice (77 P.S. § 999). In addition, payment for the Subsequent Injury Fund assessment is made on an annual basis under section 306.2 of the act (77 P.S. § 517); this assessment was, per statute, originally issued at the end of the 1971-1972 fiscal year and is currently issued in conjunction with the annual assessment for the Supersedeas Fund (77 P.S. § 999).

(5) The PCRB and CMCRB remark that sections 121.22(b), 121.23(a)(3) and 121.31(c) are confusing in that they appear to require that each insurance carrier collect an exact amount from all of its insured employers. Of course, lapses in policies and variations among insurance carriers' business practices make adherence to an exact collection administratively burdensome, if not impossible. In keeping with the intent of Act 57 of 1997, the Department's use of the term "collect" was designed to establish that assessments are to be imposed, collected and remitted through insurers. The Department did not intend to bind insurers to an impossible task. Therefore, the Department has incorporated the suggestions of the commentators and amended the aforementioned sections to clarify that insurance carriers "shall remit" assessment amounts to the Department according to the appropriate formulas. The Department believes that sections 121.22(d), 121.23(c), 121.31(d), and 121.33(b)(3) sufficiently establish that assessments shall be imposed, collected and remitted through insurers.

(6) The PCRB, CMCRB and IRRC note that section 121.34(a), relating to "Objections to Assessments" is somewhat redundant and confusing in light of section 121.34(e). Section 121.34(a) provides: "Objection to assessment does not relieve an insurer of its obligation to promptly pay assessment amounts imposed under [the Act]." The commentators state that section 121.34(e) already requires that payment be made within ten days of the objecting party's receipt of the Department's findings and notice of the amount charged against the objecting party. The Department agrees that the section, as written, may be confusing. Therefore, the Department has deleted the above language from section 121.34(a) and revised section 121.34(e) to reflect that payment must be made within ten days after receipt of the Department's findings

and, in accordance with sections 443 and 446 of the act, 77 P.S. §§999, 1000.2, before the commencement of any action to recover amounts paid pursuant to those findings.

(7) IRRC suggests that use of the term “accumulated” in sections 121.22(a)(2)(ii), 123.23(a)(2) and 121.31(b) is confusing. The Department agrees with IRRC’s suggestion that “accumulated” be replaced with “calculated” and has made changes to reflect IRRC’s comments.

(8) IRRC comments that sections 121.22(e), 121.23(d) and 121.31(f) are unclear in their attempt to establish that self-insured employers and runoff self- insurers must pay assessments directly to the Department. The Department agrees that a clarification is in order and thus adopts the language suggested by IRRC.

(9) IRRC comments that section 121.23(e), relating to the Supersedeas Fund, is unclear in its attempt to establish that all applications will be reviewed administratively to determine whether judicial resolution is necessary. The regulations have been revised to address IRRC’s concerns.

(10) The Alliance of American Insurers expresses concern that the amendments do not adequately protect insurers from taxes which they may be required to pay in other states. In response, the Department maintains that these amendments were crafted within the limited framework of the act and Act 57 of 1997. Similarly, the Department has adopted these regulations to fulfill the legislative directive of Act 57 of 1997. Therefore, it is the Department’s belief



that it has adequately responded to the needs of the regulated community in proposing and adopting these amendments.

*Reporting, Recordkeeping and Paperwork Requirements*

The regulations do not require the creation of any new forms, and requires few modifications to existing forms. All data which is required by the regulations is currently maintained by the Insurance Department and the approved compensation rating organization(s). Therefore, the regulations do not impose any additional reporting, recording, or paperwork requirements on either the Commonwealth or the regulated community.

*Sunset Date*

No sunset date is necessary for these amendments. These amendments will be continuously monitored, because the Department regularly issues the assessments regulated by these amendments. Issues regarding the regulations' effectiveness, clarity or impartiality can be easily addressed through the specified objection procedures and communications between employers, insurers and the Department. If needed, corrections can be made based on information received in those proceedings and communications.

*Effective Date*

These proposed amendments will be effective on publication in the *Pennsylvania Bulletin* and will apply to all assessments issued on or after July 1, 1998.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on September 5, 1998, the Department submitted copies of the proposed rulemaking, published at 28 Pa. B. 4603, to IRRC and to the Chairpersons of the House Labor Relations Committee and the Senate Labor and Industry Committee (Standing Committees) for review and comment. IRRC and the Standing Committees were provided with copies of the comments received during the public comment period.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, stakeholders and the public.

These final-form regulations were deemed approved by the House and Senate Committees on \_\_\_\_\_. IRRC met on \_\_\_\_\_, and approved the amendments in accordance with section 5(c) of the Regulatory Review Act.

*Contact Person*

The contact person is Richard A. Himler, Director, Bureau of Workers' Compensation, Department of Labor and Industry, (717) 783-5421, 1171 South Cameron Street, Room 324, Harrisburg, PA 17104.

### *Findings*

The Department finds that:

(1) Public notice of intention to amend the administrative regulations amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendment of the regulations of the Department in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

### *Order*

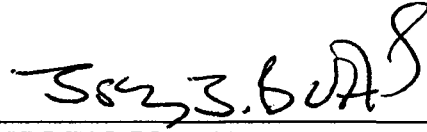
The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department , 34 Pa. Code, are amended by adding §§ 121.31 - 35; and by amending §§ 121.1, 121.22 - 23 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* and will apply to all assessments issued on or after July 1, 1998.

A handwritten signature in black ink, appearing to read "Johnny J. Butler", written in a cursive style.

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JOHNNY J. BUTLER,  
*Secretary*

ANNEX A

TITLE 34. LABOR AND INDUSTRY

PART VIII: BUREAU OF WORKERS' COMPENSATION  
CHAPTER 121. GENERAL PROVISIONS

§ 121.1. General.

(a) The provisions of this chapter are promulgated in response to the legislative mandate in the Workers' Compensation Act (77 P.S. §§ 1-2626) and designed to further the lawful, efficient, and speedy administration of the act. The term employer as used in the provisions of this chapter shall mean, where applicable, the insurer thereof and a self-insured employer.

(b) **Definitions**

**The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:**

*act* -- The Pennsylvania Workers' Compensation Act (77 P.S. §§ 1 - 2626).

*approved rating organization* -- one or more organizations situated within this Commonwealth, subject to supervision and to examination by the Insurance Commissioner and approved by the Insurance Commissioner as adequately equipped to perform the functions specified in Chapter 7B of the Workers' Compensation Act, 77 P.S. §§1035.1 - 1035.22, on an equitable and impartial basis.

*Bureau* -- The Bureau of Workers' Compensation.

*Department* -- The Department of Labor and Industry.

*earned premium* -- “Direct Premium Earned” as required to be reported to the Insurance Department on Special Schedule “W,” pursuant to section 655 of the Act of May 17, 1921, P.L. 682, No. 284 (40 P.S. § 815) known as the Insurance Company Law of 1921. For the purposes of this chapter, “direct premium earned” may not include: (1) the effects of premium credits granted under deductible elections by insured employer; (2) premiums not attributable to coverage under the Pennsylvania Workers’ Compensation Act or Occupational Disease Act; (3) premiums attributable to excess policies written for specified retentions on self-insured employers.

*insurance carrier* -- An entity or group of affiliated entities subject to the act of May 17, 1921, P.L. 682, No. 284 (40 P.S. § 341-447d) known as the Insurance Company Law of 1921, including the State Workers’ Insurance Fund, but not including self-insured employers or runoff self-insurers, with which an employer has insured its liability pursuant to section 305 of the act (77 P.S. § 501).

*insured employer* -- An employer which has chosen to insure its workers’ compensation liabilities through a workers’ compensation insurance carrier licensed to do so in this Commonwealth. The term “employer” when used in this context shall not include the insurer thereof.

*insurer* -- A workers’ compensation insurance carrier which is licensed to insure workers’ compensation liabilities in this Commonwealth and acts in such capacity on the behalf of insured employers. This term includes a self-insured employer and a runoff self-insurer.

*runoff self-insurer* -- An employer that had been a self-insurer but no longer maintains a current permit to self-insure under section 305 of the act (77 P.S. § 501).

***self-insured employer*-- An employer which has been granted the privilege to self-insure its liability under the act. The term includes a parent company or affiliate which has assumed a subsidiary's or an affiliate's liability upon the termination of the parent-subsidary or affiliate relationship, and a runoff self-insurer.**

***special funds* - Funds maintained under sections 306.2, 443 and 446 of the act (77 P.S. §§ 517, 999, 1000.2).**

§ 121.22. Subsequent injury fund.

(a) Compensation for a subsequent injury, as defined in section 306.1 of the **[Workers' Compensation Act] act** (77 P.S. § 516) shall be paid as follows:

(1) The **[insurer] employer** shall be responsible for payments due for specific loss under section 306(c) of the **[Workers Compensation Act] act** (77 P.S. § 513).

(2) Upon expiration of the specific loss period, the Department [of Labor and Industry] will be responsible for additional compensation due for the duration of total disability. **[The sum of \$100,000 shall be appropriated to the Department for that purpose.] [This] The fund established under section 306.2 of the act (77 P.S. § 517), from which these payments are to be made, shall be maintained as follows:**

(i) **Self-insured employers shall pay assessments in amounts determined by the following:**

|  |   |  |
|--|---|--|
| <p><i>Amount of Compensation Paid by [an Insurer]<br/>a Self-insured Employer during the Preceding<br/>Calendar Year</i></p> <hr/> <p>Total Amount of Compensation Paid by<br/>All Insurers during the Preceding Calendar Year</p> | x | <p><b>[The Amount Expended]</b><br/>The Amount Expended<br/>from the Subsequent<br/>Injury Fund during the<br/>Preceding Calendar Year</p> |
|--|---|--|

(ii) The amount expended from the Subsequent Injury Fund during the preceding calendar year, minus the total amount owed by all self-insured employers, as calculated under the preceding paragraph, shall equal the “Aggregate Amount to be Collected by Insurance Carriers.”

(b) [Each Insurer will be assessed an amount determined by the formula, except that in the first year assessments will be made at a rate of 200 %. Reassessments will be made annually for the continued maintenance of this fund.] Insurance carriers shall remit to the Department assessment amounts as follows:

|  |   |   |
|--|---|---|
| <p>Amount of Earned Premium as<br/>Reported to the Insurance<br/>Department, by an Insurance Carrier,<br/>for the Preceding Calendar Year</p> <hr/> <p>Total Amount of Earned Premium<br/>Reported to the Insurance Department<br/>by all Insurance Carriers for the<br/>Preceding Calendar Year</p> | X | <p>Aggregate Amount to be<br/>Collected by Insurance Carriers</p> |
|--|---|---|

(c) If the Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier, for the Preceding Calendar Year is less than zero, the Department



will calculate the assessment amount as though an Earned Premium amount of zero were reported to the Insurance Department.

(d) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Pennsylvania Insurance Commissioner.

(e) Self-insured employers and runoff self-insurers shall pay assessments directly to the Department.

(f) The claimant shall file a petition for additional compensation as provided in section 315 of the [Workers' Compensation Act] act (77 P.S. § 602) or the claim will be forever barred.

§ 121.23. The supersedeas fund.

(a) Annual assessments [Under] under section 443 of the [Workers' Compensation Act] act (77 P.S. § 999) [each insurer] shall be [annually assessed an amount] in amounts [as] determined by the following [formula]:

(1) Self-insured employers shall pay assessments in amounts determined by the following:

|  |   |   |
|--|---|---|
| Amount of Compensation Paid by [an Insurer]<br>a Self-insured Employer<br>during the Preceding Calendar Year | X | The Amount of<br>Supersedeas Payments<br>Made or Accrued as Payable<br>during the Preceding Calendar Year |
| Total Amount of Compensation Paid by<br>All insurers during the Preceding<br>Calendar Year                   |   |   |

**(2) The amount of supersedeas payments made or accrued as payable during the preceding year, minus the total amount owed by all self-insured employers, as calculated under the preceding paragraph, shall equal the “Aggregate Amount to be Collected by Insurance Carriers.”**

**(3) Insurance carriers shall remit to the Department assessment amounts as follows:**

|   |          |   |
|---|----------|---|
| <b>Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier, for the Preceding Calendar Year</b>           | <b>X</b> | <b>Aggregate Amount to be Collected by Insurance Carriers</b> |
| <b><u>Total Amount of Earned Premium Reported to the Insurance Department by all Insurance Carriers for the Preceding Calendar Year</u></b> |          |   |

**(b) If the Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier, for the Preceding Calendar Year is less than zero, the Department will calculate the assessment amount as though an Earned Premium amount of zero were reported to the Insurance Department.**

**(c) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Pennsylvania Insurance Commissioner.**

**(d) Self-insured employers and runoff self-insurers shall pay assessments directly to the Department.**

**(e) Applications for reimbursement shall be filed directly with the Bureau [of Occupational Injury and Disease Compensation, Department of Labor and Industry, Harrisburg, Pennsylvania 17120], on Form [OIDC-662] LIBC-662, [Request] “Application for Superseas Fund Reimbursement.” All [applications shall be promptly assigned to a referee of the Department who shall make a determination as to eligibility for reimbursement, after affording parties in interest, and the Commonwealth, the opportunity for a hearing.] applications will be processed administratively to determine whether the parties can agree on the payment or amount of reimbursement. If the payment or amount of reimbursement cannot be agreed upon, the matter will be assigned to a Workers’ Compensation Judge for a formal hearing and adjudication.**

**§ 121.31. Workmen’s Compensation Administration Fund.**

**(a) Annual assessments on self-insured employers, under section 446(b) of the act (77 P.S. § 1000.2(b)), shall be in amounts determined by the following:**

|  |          |  |
|--|----------|--|
| <b>Amount of Compensation Paid<br/>by a Self-insured Employer during<br/>the Preceding Calendar Year</b> |          | <b>The Approved Budget of the<br/>Workmen’s Compensation<br/>Administration Fund for the<br/>Current Fiscal Year</b> |
| <hr/>  | <b>X</b> |  |
| <b>Total Amount of Compensation<br/>Paid by All Insurers during<br/>the Preceding Calendar Year</b>      |          |  |

**(b) The approved budget of the Workmen’s Compensation Administration Fund for the current fiscal year, minus the total amount owed by all self-insured employers, as calculated under the preceding subsection, shall equal the “Aggregate Amount to be Collected by Insurance Carriers.”**

**(c) Insurance carriers shall remit to the Department assessment amounts as follows:**

|  |          |   |
|--|----------|---|
| <b>Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier, <u>for the Preceding Calendar Year</u></b> | <b>X</b> | <b>Aggregate Amount to be Collected by Insurance Carriers</b> |
| <b>Total Amount of Earned Premium Reported to the Insurance Department by all Insurance Carriers for the Preceding Calendar Year</b>     |          |   |

**(d) If the Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier, for the Preceding Calendar Year is less than zero, the Department will calculate the assessment amount as though an Earned Premium amount of zero were reported to the Insurance Department.**

**(e) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Pennsylvania Insurance Commissioner.**

**(f) Self-insured employers and runoff self-insurers shall pay assessments directly to the Department.**

**§ 121.32. Office of Small Business Advocate.**

**(a) The Department may collect annual assessments imposed on insurance carriers, but not on self-insured employers or runoff self-insurers, for the purpose of funding the Office of Small Business Advocate in accordance with section 1303 of the act (77 P.S. § 1041.3). Insurance carriers shall be directly liable to the Department for prompt payment of assessments for the Office of Small Business Advocate, as provided in the act and this chapter.**

**(b) Annual assessments under section 1303 of the act (77 P.S. § 1041.3) shall be in amounts as determined by the following formula:**

$$\begin{array}{l} \text{Amount of Compensation} \\ \text{Paid by an Insurance Carrier,} \\ \text{but not a Self-insured} \\ \text{Employer or Runoff Self-insurer,} \\ \text{during the Preceding} \\ \text{Calendar Year} \\ \hline \text{Total Amount of Compensation} \\ \text{Paid by All Insurance Carriers,} \\ \text{but not Self-insured Employers} \\ \text{or Runoff Self-insurers, during} \\ \text{the Preceding Calendar Year} \end{array} \quad \times \quad \begin{array}{l} \text{The Approved Budget of} \\ \text{the Office of Small Business} \\ \text{Advocate for the Current} \\ \text{Fiscal Year} \end{array}$$

**§ 121.33. Collection of Special Funds Assessments.**

**(a) The Department will collect assessments for the special funds by calculating the total amount:**

**(1) which each self-insured employer is liable for paying to the Department;**  
**and**

**(2) which each insurance carrier is responsible for collecting from insured employers and remitting to the Department.**

**(b) Assessments for the special funds shall be imposed, collected and remitted as follows:**

**(1) The Department will transmit to each insurance carrier and self-insured employer a "Notice of Assessment Amount to be Collected," which shall specify the amount calculated pursuant to subsection (a) and the date on which the amount is due.**

**(2) Each self-insured employer shall timely remit to the Department the amount calculated under paragraph (a)(1).**

**(3) Each insurance carrier shall collect payment for assessments from insured employers according to the procedures defined by the approved rating organization and approved by the Pennsylvania Insurance Commissioner and timely remit payment to the Department.**

**(4) The failure of any insurance carrier to receive payment from an insured employer does not limit an insurance carrier's responsibility to collect and timely remit to the Department the total amount calculated under paragraph (a)(2).**

**§ 121.34. Objections to Assessments.**

**(a) A party receiving a “Notice of Assessment Amount to be Collected” from the Department may, within 15 days of receipt, object to the assessment reflected in such notice on the basis that it is excessive, erroneous, unlawful or invalid. Insured employers retain all rights provided under section 717 of the act (77 P.S. § 1035.17) (relating to Requests for review; appeals to commissioner).**

**(b) Any objection shall be set forth in numbered paragraphs, shall specifically state the facts necessary to determine the validity of the challenged assessment or assessment amount, and shall be accompanied by a supporting memorandum documenting the legal grounds for the objection or objections.**

**(c) Any objection to assessment or assessment amount shall be accompanied by a Proof of Service as specified in 1 Pa. Code § 33.35 (relating to Proof of service) and a Notice of Appearance as specified in 1 Pa. Code § 31.24 (relating to Notice of appearance), and shall be served on all interested parties as specified in 1 Pa. Code § 33.32 (relating to Service by a participant).**

**(d) Any objection not conforming to this regulation or the act will be rejected by the Department. The Department will notify the objecting party of the specific reason or reasons for any such rejection. The objecting party shall have 30 days to cure any deficiency.**

**(e) Upon receipt of any objection which conforms to this regulation and the act, the Department will hold a hearing in accordance with the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II. After the hearing, the Department will record its findings on any and all objections and will transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with the findings. Such amount shall be paid by the objector within ten days after receipt of the findings. After payment has been made, the objector may initiate an action in the appropriate court to recover the payment of the assessment or any portion thereof. No insurer may maintain an action to recover payment unless it has previously objected under subsection (a).**

**§ 121.35. Annual Reports of Compensation Paid.**

**Every annual report of compensation paid made by an insurer pursuant to sections 445 and 446(e) of the act (77 P.S. §§ 1000.1 and 1000.2(e)) shall include amounts paid by an insurer for which policyholders have agreed to reimburse the insurer under deductible policies issued pursuant to section 448 of the act (77 P.S. § 1000.4).**





COMMONWEALTH OF PENNSYLVANIA  
**DEPARTMENT OF LABOR AND INDUSTRY**  
HARRISBURG, PA 17120

March 11, 1999

The Honorable Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17120

RE: Final Rulemaking  
ID #12-53

Dear Executive Director Nyce:

In accordance with the Regulatory Review Act (Act), enclosed is a copy of the face sheet, preamble, and text for the final rulemaking which the Department of Labor & Industry (Department) intends to adopt pursuant to rulemaking authority contained in section 435 of the Act (77 P.S. § 991).

Pursuant to Section 5.1 (c) of the Act, the House Labor Relations Committee and the Senate Labor & Industry Committee have 20 days, or until March 31, 1999, to review the final-form regulations and either approve or disapprove the regulations. If no action is taken, the Committees are deemed to have approved the regulations.

Questions concerning these regulations can be directed to Mr. Richard Himler, Director, Bureau of Workers' Compensation, 1171 South Cameron Street, Harrisburg, PA 17104, 717-783-5421.

The Department's staff is available to discuss these regulations with you or members of your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheila A. Borne".

Sheilah A. Borne  
Director  
Office of Legislative Affairs

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 12-53  
SUBJECT: Workers' Compensation Special Funds Assessment  
AGENCY: DEPARTMENT OF LABOR & INDUSTRY

99 MAR 16 AM 11:38

INDEPENDENT REGULATORY  
REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

| DATE    | SIGNATURE                                    | DESIGNATION                              |
|---------|--|--|
| 3/16    | <i>Suzette Berman/Cladeck</i>                | HOUSE COMMITTEE ON LABOR RELATIONS       |
| 3/16    | <i>W. J. ...</i>                             |  |
|         | <i>R. Dutcher - Sen. Armstrong - 3-16-99</i> | SENATE COMMITTEE ON LABOR & INDUSTRY     |
|         | <i>B. L. Cain - Sen. Belan 3-16-99</i>       |  |
| 3/16/99 | <i>Kenn C. ...</i>                           | INDEPENDENT REGULATORY REVIEW COMMISSION |
|         |  | ATTORNEY GENERAL                         |
|         |  | LEGISLATIVE REFERENCE BUREAU             |