

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of Labor & Industry
Bureau of Workers' Compensation

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

12-53

IRRC Number:

1978

5:00 PM
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REGULATORY ANALYSIS
REVIEW COMMISSION

McGinley

(3) Short Title

Special Funds Assessments Proposed 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 proposed rulemaking provides the mechanism to implement section 2218 of Act 57 of 1997, which requires that assessments be collected "through" insurers rather than imposed "on" insurers. In addition, the proposed rulemaking provides changes necessary for effective operation of the Subsequent Injury Fund, Supersedeas Fund and Workmen's Compensation Administration Fund. The proposed 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 proposed 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 be unable 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 Bureau.

(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.

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(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.

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(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 Year	FY+1 Year	FY+2 Year	FY+3 Year	FY+4 Year	FY+5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(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.

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(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.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

937 373 11 01 02
LEGISLATIVE REFERENCE BUREAU
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: <u><i>David J. York</i></u> DEPUTY ATTORNEY GENERAL</p> <p><u>AUG 11 1998</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Department of Labor & Industry</u> (AGENCY)</p> <p>DOCUMENT / FISCAL NOTE NO. <u>12-53</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u><i>Johnny J. Butler</i></u> Johnny J. Butler TITLE: <u>Secretary of Labor & Industry</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or independent agencies.</p> <p>BY: <u><i>[Signature]</i></u></p> <p><u>7/12/98</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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PROPOSED RULEMAKING

TITLE 34 -- LABOR & INDUSTRY

**DEPARTMENT OF LABOR & INDUSTRY
[34 PA. CODE, CHAPTER 121]
SPECIAL FUNDS ASSESSMENTS**

PROPOSED 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), proposes to provide clarifications and detailed guidance for the uniform application of section 2218 of the act of November 26, 1997 (P.L. 530, No. 57) (Act 57 of 1997), as it affects the Pennsylvania Workers' Compensation Act, the act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1 - 2626 (act). The Department proposes to amend 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 proposes to add sections to chapter 121 to implement section 2218 of Act 57 of 1997 and to refine 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 Fund, Supersedeas Fund, and Workmen's Compensation Administration Fund (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 proposed 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 proposed under the additional authority of sections 401.1 and 435 of the act (77 P.S. §§ 710, 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, 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, this proposed rulemaking fulfills the legislative directive which states that this change shall be effected “in accordance with regulations promulgated by the Department of Labor and Industry.” This proposed rulemaking further clarifies and amends existing sections of chapter 121, and adds new sections to implement section 2218 of Act 57 of 1997.

Purpose

The purpose of these proposed amendments is to effectuate the provisions of section 2218 of Act 57 of 1997 and to clarify and enforce the provisions of the act which provide for assess-

ments for the special funds and the Office of Small Business Advocate. In addition, these proposed amendments clarify procedures relating to operations of the special funds.

Affected Persons

Those affected by these proposed 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 this proposed rulemaking. These amendments require no new forms nor do they result in any significant costs to the Commonwealth. Similarly, these proposed amendments have been written to prevent any significant costs to the regulated community associated with their implementation.

Summary of Proposed Rulemaking: Chapter 121

These proposed amendments provide detailed guidance for the imposition, collection and remittance of assessments for the special funds through insurers in accordance with the provisions of section 2218 of Act 57 of 1997. In addition, the Department proposes amendments intended to clarify that self-insured employers and runoff self-insurers remain liable for assessments for the special funds.

The Department, through this proposed rulemaking, proposes amending section 121.1 (relating to General) to include definitions for the following terms: act; approved rating organization; Bureau; Department; earned premium; insurance carrier; insured employer; insurer;

runoff self-insurer; self-insured employer; and special funds. The amendments to this section are intended to define terms used throughout this chapter and to clarify assessment procedures by defining terms to correspond to chapter 125 of Title 34 of the Pennsylvania Code (relating to Workers' Compensation Self-Insurance).

The Department proposes amendments to section 121.22 (relating to Subsequent injury fund). These amendments are intended to provide a means of calculating and collecting assessment amounts pursuant to Act 57 of 1997. These assessments will be collected from insured employers, through insurance carriers, according to the procedures defined by the approved rating organization and approved by the Pennsylvania Insurance Commissioner. Insurance carriers shall be responsible for collecting these assessments and timely remitting them to the Department in accordance with the formula set forth in this section.

The Department additionally proposes amendments to section 121.23 (relating to The supersedeas fund). These amendments are intended to provide a means of calculating and collecting assessment amounts pursuant to Act 57 of 1997. The amendments specify that, for calculation of supersedeas fund assessment amounts, the total amount reimbursed from the fund in the preceding calendar year includes both 1) amounts expended from the fund and 2) amounts accrued as payable from the fund during the preceding year. In addition, these amendments provide that Applications for Supersedeas Fund Reimbursement will be reviewed administratively and will be assigned to a Workers' Compensation Judge only where the payment or amount of reimbursement cannot be agreed upon, thus conserving judicial resources for contested applications. This assessment will be collected from insured employers, through insurance carriers, according to the procedures defined by the approved rating organization and approved by the Pennsylvania Insurance Commissioner. Insurance carriers shall be responsible

for collecting these assessments and timely remitting them to the Department in accordance with the formula set forth in this section.

The Department, through this proposed rulemaking, proposes to amend chapter 121 by adding the following: section 121.31 (relating to Workmen's Compensation Administration Fund); section 121.32 (relating to Office of Small Business Advocate); section 121.33 (relating to Collection of Special Funds Assessments); 121.34 (relating to Objections to Assessments); and section 121.35 (relating to Annual Reports of Compensation Paid).

The Department proposes the addition of section 121.31 (relating to Workmen's Compensation Administration Fund). This amendment provides the calculation necessary for determining the appropriate assessment amount for the Workmen's Compensation Administration Fund. This assessment will be collected from insured employers, through insurance carriers, according to the procedures defined by the approved rating organization and approved by the Pennsylvania Insurance Commissioner. Insurance carriers shall be responsible for collecting these assessments and timely remitting them to the Department in accordance with the formula set forth in this section.

The Department further proposes that chapter 121 be amended by adding section 121.32 (relating to Office of Small Business Advocate). This amendment provides for calculation of the appropriate assessment amount for the Office of Small Business Advocate. Self-insured employers and runoff self-insurers are not subject to this assessment, which is an assessment solely on insurance carriers. Currently the Department collects this assessment under the authority of a pre-existing memorandum of understanding between the Department and the Insurance Department. The memorandum of understanding requires that the Department "continue to make the assessments required by §1303 of the Workers' Compensation Act, on behalf of the Insurance

Department, against workers' compensation insurers for the operations of the Office of Small Business Advocate related to filings made by rating organizations." To this extent, these amendments are necessary to allow the Department to meet its obligations under the memorandum of understanding. The assessment for the Office of Small Business Advocate will be collected from insurance carriers according to the ratio which each insurance carrier's payments of compensation bears to the total amount of compensation paid by all insurance carriers in the preceding calendar year, multiplied by the approved budget of the Office of Small Business Advocate for the current fiscal year.

Section 121.33 of the proposed rulemaking is designed to establish a procedure for collecting assessments in accordance with section 2218 of Act 57 of 1997. The proposed section establishes that insurers, on behalf of their insured employers, are responsible to the Department for the imposition, collection and remittance of certain assessments. This confirms the language of Act 57 of 1997, which states: "The 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."

Section 121.34 of the proposed rulemaking proposes the adoption of procedures for insurers' objections to assessments. This proposed section provides that objections by insurers must be made within 15 days of receipt of the "Notice of Assessment Amount to be Collected" issued under section 121.33 of this chapter. Objections must be in writing and specifically state the facts necessary to determine the validity of the challenge. Upon receipt of objections conforming to these proposed regulations, the Department will hold a hearing in accordance with the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II. After such

hearing, the Department will transmit its findings on the objections to the objecting party. With respect to insured employers, this proposed rulemaking states that insured employers retain all rights conferred by section 717 of the act (77 P.S. § 1035.17) (relating to Requests for review; appeals to commissioner).

The Department, through this proposed rulemaking, also proposes the addition of section 121.35 (relating to Annual Reports of Compensation Paid). This section clarifies that reports of compensation paid 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). This section is meant to clarify that compensation includes all compensation paid whether paid under deductible or non-deductible policies and regardless of whether amounts are reimbursed by insured employers under deductible policies.

Effective Date

These proposed amendments will be effective on publication and shall apply to all assessments issued on or after July 1, 1998.

Regulatory Review

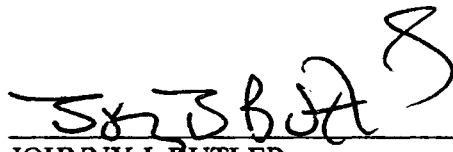
Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on 8/26/98, the Department submitted copies of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Labor Relations Committee and the Senate Labor and Industry Committee (Standing Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Standing Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance

with Executive Order 1996-1, Regulatory Review and Promulgation. A copy of this material is available to the public upon request.

If the Standing Committees have objections to any portion of the proposed amendments, they will notify the Department within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notifications shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of objections raised prior to final publication of the final form regulations.

Public Comment and Contact Person

For further information regarding this proposed rulemaking, interested parties may contact Richard A. Himler, Director, Bureau of Workers' Compensation, P.O. Box 15121, Harrisburg, PA 17105-5121. Interested persons are invited to submit written comments to Richard A. Himler, Director, at the address listed above. [REDACTED] publication in the Pennsylvania Bulletin. Written comments received by the Department may be made available to the public.



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.

insurance carrier -- An entity 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-subsidiary 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:

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

(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

accumulated 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 collect from insured employers and remit to the Department assessment amounts as follows:**

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

(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 be directly responsible to the Department for payment of assessments.**

(e) **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] a Self-insured Employer during the Preceding Calendar Year	X	The Amount of Supersedeas Payments Made or Accrued as Payable during the Preceding Calendar Year
Total Amount of Compensation Paid by All insurers during the Preceding 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 accumulated under the preceding paragraph, shall equal the "Aggregate Amount to be Collected by Insurance Carriers."

(3) Insurance carriers shall collect from insured employers and remit to the Department assessment amounts as follows:

Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier, for the Preceding Calendar Year	X	Aggregate Amount to be Collected by Insurance Carriers
Total Amount of Earned Premium Reported to the Insurance Department by all Insurance Carriers for the Preceding Calendar Year		

(b) 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.

(c) Self-insured employers and runoff self-insurers shall be directly responsible to the Department for payment of assessments.

(d) 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 Supersedeas 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. Where 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:

**Amount of Compensation Paid
by a Self-insured Employer during
the Preceding Calendar Year**

**Total Amount of Compensation
Paid by All Insurers during
the Preceding Calendar Year**

X

**The Approved Budget of the
Workmen's Compensation
Administration Fund for the
Current Fiscal Year**

(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 accumulated under the preceding subsection, shall equal the "Aggregate Amount to be Collected by Insurance Carriers."

(c) Insurance carriers shall collect from insured employers and remit to the Department assessments as follows:

**Amount of Earned Premium as
Reported to the Insurance
Department, by an Insurance Carrier,
for the Preceding Calendar Year**

**Total Amount of Earned Premium
Reported to the Insurance Department
by all Insurance Carriers for the
Preceding Calendar Year**

X

**Aggregate Amount to be
Collected by Insurance Carriers**

(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 be directly responsible to the Department for payment of assessments.

§ 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:

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

§ 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. Objection to assessment does not relieve an insurer of its obligation to promptly remit assessment amounts imposed

pursuant to sections 306.2, 443, 446 or 1303 of the act (77 P.S. §§ 517, 999, 1000.2, 1041.3).

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 and a Notice of Appearance as specified in 1 Pa. Code § 31.24, and shall be served on all interested parties as specified in 1 Pa. Code § 33.32.

(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. That amount shall be paid by the objector within ten days after receipt of the findings unless within that time the objector initiates an action in the appropriate court to restrain the collection or payment of the assessment.

§ 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, 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

August 26, 1998

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17120

RE: Proposed Rulemaking
ID #12-53

Dear Mr. Nyce:

In accordance with the Regulatory Review Act (Act), enclosed are copies of the preamble, text, and regulatory analysis for the proposed 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 © of the Act, the House Labor Relations Committee and the Senate Labor & Industry Committee have 20 days from the close of the public comment period to file comments or recommendations with the promulgating agency.

Questions concerning these regulations can be directed to Mr. Richard Himler, Director, Bureau of Workers' Compensation, 1171 South Cameron Street, Harrisburg, PA 17104, 717-783-4476.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheila A. Borne".

Sheila A. Borne

Director

Office of Legislative Affairs

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 12-53
 SUBJECT: Special Funds Assessments
 AGENCY: Department of Labor & Industry

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TYPE OF REGULATION

- Proposed Regulation
- 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
8/24/98	<i>Suzette Beane</i>	HOUSE COMMITTEE ON LABOR RELATIONS
8/24/98	<i>William Z. Grady</i>	
8/28	<i>Chris Patton</i>	SENATE COMMITTEE ON LABOR & INDUSTRY
8-26	<i>B. L. Cair</i>	
8-26-98	<i>Kim C. Garner</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

August 24, 1998

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