



**INDEPENDENT REGULATORY REVIEW COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
333 MARKET STREET  
14TH FLOOR  
HARRISBURG, PA 17101**

**(717) 783-5417  
Fax (717) 783-2664**

November 5, 1998

Honorable Johnny J. Butler, Secretary  
Department of Labor & Industry  
1700 Labor and Industry Building  
Harrisburg, PA 17120

Re: IRRC Regulation #12-53 (#1978)  
Department of Labor & Industry  
Special Funds Assessments

Dear Secretary Butler:

Enclosed are our Comments on your proposed regulation #12-53. They are also available on our website at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact Fiona Wilmarth at 783-5438.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce  
Executive Director

REN:kcg

Enclosure

cc: Richard A. Himler  
Office of General Counsel  
Office of Attorney General  
Pete Tartline

**COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION**

**ON**

**DEPARTMENT OF LABOR AND INDUSTRY REGULATION NO. 12-53**

**SPECIAL FUNDS ASSESSMENTS**

**NOVEMBER 5, 1998**

We have reviewed this proposed regulation from the Department of Labor and Industry (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to the clarity of the regulation. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

**1. Section 121.1(b) Definitions. – Clarity.**

The proposed definition of “earned premium” refers to the direct premium earned as reported on Special Schedule W. In their comments, the Pennsylvania Compensation Rating Bureau and the Coal Mine Compensation Rating Bureau note that not all the premium information reported on Special Schedule W is relevant for calculating the earned premium. The commentators list the data from Special Schedule W which should be included and excluded from the calculation.

The definition of “earned premium” should identify the specific items from Special Schedule W that are to be used to determine the earned premium. We suggest the Department clarify this definition in the final-form regulation.

**2. Section 121.22. Subsequent injury fund. – Clarity.**

*Section 121.22(a)(2)(ii) – Calculation of the assessments.*

Section 121.22(a)(2)(ii) references the assessments as “accumulated” in Paragraph (a)(2)(i). Paragraph (a)(2)(i) contains the formula for calculating the assessments. Similar language is also found in Sections 121.23(a)(2) and 121.31(b). We suggest the Department replace “accumulated” with “calculated” in these sections.

*Section 121.22(d) – Payments from self-insurers and runoff self-insurers.*

Section 121.22(d) states the following:

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

This language is also contained in Sections 121.23(c) and 121.31(e). It appears the intent of this provision is to require self-insured employers and runoff self-insurers to pay their assessments directly to the Department. To improve the clarity of this provision, we suggest the Department revise Sections 121.22(d), 121.23(c) and 121.31(e) to simply state that these parties shall pay their assessments directly to the Department.

**3. Section 121.23. The supersedeas fund. – Clarity.**

Section 121.23(d) states that “Applications will be processed administratively.” It is unclear if this provision applies to all applications or only to uncontested applications. We suggest the Department clarify this provision in the final-form regulation.

**4. Section 121.34. Objections to assessments. – Clarity.**

Paragraph (a) contains the following language:

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

This language could be interpreted to mean that if an employer objects to an assessment amount, the insurance company is still required to submit the assessment pending resolution of the employer’s objection. It is our understanding that this is not the Department’s intent. When an employer objects to an assessment, the Department will hold a hearing and report its findings on the objection. If the findings indicate an amount is owed by the employer, the employer has ten days to pay the assessment. We suggest the Department revise Paragraph (a) to clarify that when a party objects to an assessment, payment is deferred until after a hearing and issuance of findings on the objection.

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# INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** Sheila Born  
**Agency:** Department of Labor & Industry  
**Phone:** (717) 787-5087  
**Fax:** (717) 783-5225

**From:** Kristine M. Shomper  
Deputy Director for Administration  
**Company:** Independent Regulatory Review  
Commission  
**Phone:** (717) 783-5419 or (717) 783-5417  
**Fax:** (717) 783-2664

**Date:** November 5, 1998  
**# of Pages:** 4

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Labor & Industry's regulation #12-53. Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: CHRIS COMISAC Date: 11/5/98 9:21 AM

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# MEMORANDUM

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**To:** Chris Latta  
Senate Labor and Industry  
Committee

Hugh Baird  
Senate Labor and Industry  
Committee

Bruce Hanson  
House Labor Relations Committee

Wesley Johnson, Jr.  
House Labor Relations Committee

**From:** Fiona E. Wilmarth, Regulatory Analyst *fw*  
Independent Regulatory Review Commission

**Date:** November 6, 1998

**Subject:** Commission's Comments  
Department of Labor and Industry  
Regulation # 12-53 (IRRC #1978)  
Special Funds Assessments

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On Thursday, November 5, 1998, the Commission submitted its Comments to the Department of Labor and Industry on the above-referenced proposed regulation. If you have any questions, please contact me at 783-5438. Thank you for your time and consideration.

ATTACHMENT