

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of Labor & Industry
Unemployment Compensation Board of Review

2012 SEP 12 11:37

UNEMPLOYMENT COMPENSATION BOARD OF REVIEW

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

12-59

IRRC Number:

2290

(3) Short Title

Appeals from Determinations of Department.

(4) PA Code Cite

34 Pa. Code §§ 101.2, 101.81 and 101.82

(5) Agency Contacts & Telephone Numbers

Primary Contact: Kelly K. Smith; (717) 787-4186
Secondary Contact: Randall S. Brandes; (717) 787-4186

(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? (Check One)

No
 Yes: By the Attorney General
 Yes: By the Governor

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

The regulation revises the manner in which parties in unemployment compensation matters may file appeals and how the timeliness of such appeals will be determined.

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

The amendments are adopted under the authority provided in Sections 3(d) and 1 of the Unemployment Compensation Law (43 P.S. §§ 761(a) and 763(d)) and Section 2205 of the Administrative Code of 1929 (71 P.S. § 565).

Commonwealth Court has urged the Board to reconsider the effect of its regulations on parties who use common carriers in *Copyright, Inc. v. Unemployment Compensation Board of Review*, 739 A.2d 219 (Pa. Cmwlth. 1999) and parties who do not have an official U.S. postmark in *UGI Utilities, Inc. v. Unemployment Compensation Board of Review*, 776 A.2d 344 (Pa. Cmwlth. 2001). In response, the Board now seeks to amend its regulations to recognize modern methods of mailing and delivering appeals.

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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.

No.

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

The regulation is designed to provide flexibility to appealing parties in unemployment matters. These litigants are frequently unrepresented and unemployed claimants or small businesses. These amendments will recognize increasingly common methods of filing appeals and will insure that the timeliness of such appeals is established in a consistent and reliable manner. In addition, the system will be more easily administered and parties will have a reasonable opportunity to demonstrate the timeliness of an appeal.

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

Although the Board currently accepts appeals delivered by various means, this regulation will provide the parties with a clear benchmark for determining timeliness. The current system has resulted in numerous hearings and litigation, including court appeals, regarding the timeliness of appeals. This regulation will eliminate the need for many of these hearings and much litigation. This regulation will help expedite the resolution of unemployment compensation matters.

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

All parties in unemployment compensation matters who file appeals will benefit from a reliable benchmark for determining timeliness. Each year there are between 40,000 and 45,000 appeals filed to unemployment compensation referees and between 6000 and 15,000 appeals filed to the Unemployment Compensation Board of Review. The proposed amendment has the potential to affect all parties by specifically providing for appeals filed by alternative means and by establishing a clear benchmark for establishing the timeliness of an appeal. The regulation also impacts non-appealing parties by limiting the number of hearings and providing prompt resolution of claims, including fewer court appeals.

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

There is no adverse effect of the regulation.

(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.)

No parties are required to use any particular method to file. The regulation merely provides parties with additional options for filing appeals.

(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 Board solicited comments from a cross-section of interested stakeholders during the drafting process in March 2002. These stakeholders include Community Legal Services, Inc., John Stember, Esq., Widener University School of Law, Pennsylvania Chamber of Business and Industry, Pennsylvania Bar Association, Pennsylvania AFL-CIO, Employer's Unity, Inc., The Frick Company, University of Pennsylvania and Duquesne University. The Board received comments from four organizations; Employer's Unity, Inc., Community Legal Services, the Pennsylvania AFL-CIO and the Duquesne University Unemployment Compensation Clinic. In addition, the Board has consulted with other administrative agencies, including the Department of Public Welfare and the Department of Insurance regarding their appeal practices and with the Bureau of Unemployment Compensation Benefits and Allowances and the Office of U.C. Service Centers to insure that implementation can be accomplished upon enactment of the regulation.

(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.

Although the savings cannot be specifically quantified, the regulated community will incur savings by a reduction in the amount of hearings that they are required to attend in order to establish the timeliness of an appeal, as well as the savings associated with utilizing other means of delivering an appeal, such as fax, electronic filing, private courier services or express mail services.

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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.

None, except to the extent that a local government may be a party to an unemployment compensation case.

(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.

There are no significant costs to state government. It is estimated that expedited appeals and the resulting decrease in hearings will lead to cost savings for the Department.

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(20) In the table below, provide an estimate of the fiscal savings and cost 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 associated with the amendment are not reasonably quantifiable, as they result from the reduction in the number of hearings that both the regulated community and the Department are required to attend, as well as reduced delivery costs, associated with demonstrating the timeliness of an appeal.

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
UCBR	\$9,284,049	\$9,882,534	\$9,421,391	\$4,847,059 (through 3/02)

\$

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

By establishing requirements for timely filing appeals, the amount of hearings regarding the timeliness of appeals is reduced. This will result in appeals being processed more quickly and further enable the Board to continue to meet and exceed federal timeliness standards while providing prompt resolution of claims. This will also result in cost savings to the parties and the Department by reducing the amount of hearings they must attend. There are no known adverse effects or costs related to the regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The proposed amendment is designed to avoid the current confusion caused by the lack of a clear regulation, resulting in the need for additional hearings in which parties attempt to establish timely filing. The result of nonregulation is increased cost for all parties and for the Board, as well as confusion regarding the standard used to determine timeliness. These amendments will expedite the consideration of unemployment compensation cases.

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

Any alternative regulatory scheme would not result in additional costs or savings for either the Commonwealth or the regulated community.

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(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.

None.

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

The regulation will provide a competitive advantage for Pennsylvania businesses and employees by making it easier for all parties to appeal unfavorable unemployment compensation decisions, providing those parties with a clear indication of how the timeliness of those appeals will be determined and requiring fewer hearings and court appeals.

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

The regulation will amend the existing regulations at 34 Pa. Code §§ 101.2, 101.81 and 101.82. There is no other known effect on existing or proposed regulations.

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

Although public meetings will not be scheduled, the Board sought stakeholder input as described in item 16. The Board also consulted with the Bureau of Unemployment Compensation Benefits and Allowances and the Office of U.C. Service Centers in crafting the proposed language, in order to insure that compliance can be easily accomplished.

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 regulation will require minor changes to some common unemployment compensation forms, including the UCP-1 (Claimant Handbook) and UC-44 (Notice of Determination) as well as other forms containing appeal instructions. New forms are not yet available.

(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.

These amendments should help smaller business and all claimants in unemployment compensation cases by providing more and less costly ways to appeal.

(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 upon publication in the *Pennsylvania Bulletin*. It does not require the regulated community to obtain any permits, licenses or approvals.

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

The Board will review the effectiveness of the proposed regulation on a continuing basis.

6/17/2002 2:32 PM

<p>CDL-1</p> <p style="text-align: center;">FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU (Pursuant to Commonwealth Documents Law)</p> <p style="text-align: center;">#2290</p>		<p>2002 SEP 12 11:11:37</p> <p style="text-align: right;">Do Not Write In This Space</p>
<p>Copy below is hereby approved as to Form and legality. Attorney General.</p> <p>By: <u><i>Cristina Lopez</i></u> DEPUTY ATTORNEY GENERAL</p> <p style="text-align: center;"><u>SEP 09 2002</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 style="text-align: center;"><u>DEPARTMENT OF LABOR & INDUSTRY</u> (AGENCY)</p> <p>Document/Fiscal Note No. <u>12-59</u></p> <p>Date of Adoption: _____</p> <p>By: <u><i>Johnny J. Butler</i></u> JOHNNY J. BUTLER</p> <p>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>K. Keith Ray</i></u></p> <p style="text-align: center;">_____ 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>

NOTICE OF
PROPOSED RULEMAKING

TITLE 34. LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 101]

APPEALS FROM DETERMINATIONS OF DEPARTMENT

PROPOSED RULEMAKING
TITLE 34 – Labor and Industry
Part VI Unemployment Compensation Board of Review
Chapter 101
(34 Pa. Code Ch. 101)

The Department of Labor and Industry (Department), Unemployment Compensation Board of Review (Board), proposes the following amendments to 34 Pa. Code Chapter 101 to read as set forth in Annex A.

Statutory Authority.

The amendments are adopted under the authority provided in Section 3(d) of the Unemployment Compensation Law, Act of December 5, 1936, Second Ex. Sess. P.L. (1937) 2897, *as amended* (Law), 43 P.S. § 763(d), which provides that the Board has the duty to adopt, amend, or rescind rules of procedure. The Department has the power to make rules and regulations for carrying into effect the laws regulating the labor of persons within this Commonwealth under Section 2205 of the Administrative Code (71 P.S. § 565). Additionally, Section 1 of the Law (43 P.S. § 761(a)) gives the Department authority to adopt, amend and rescind rules and regulations that it deems necessary or suitable.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation.

The Board solicited input regarding the proposed regulations from a cross-section of stakeholder organizations during the drafting process. It contacted the following individuals and groups for their suggestions: Community Legal Services, Inc., John Stember, Esq., Widener University School of Law, Pennsylvania Chamber of Business and Industry, Pennsylvania Bar Association, Pennsylvania AFL-CIO, Employer's Unity, Inc., The Frick Company, University of Pennsylvania and Duquesne University. The Board received input from four organizations; Employer's Unity, Inc., Community Legal Services, the Pennsylvania AFL-CIO and the Duquesne University Unemployment Compensation Clinic.

One stakeholder requested that the Board consider specifying that a U.S. Postal Service certified mail receipt could be used as another means of establishing timely mailing of an appeal. After consideration, the Board will provide that a U.S. Postal Service Form 3817 (Certificate of Mailing) or a U.S. Postal Service certified mail receipt can be used to establish timely mailing of an appeal.

Some stakeholders expressed some concern about the use of postage meter marks for determining timeliness, where there is no official U.S. Postal Service postmark. The Board has considered the stakeholders' concerns regarding the potential for fraud. However, it feels that this potential is outweighed by its interest in providing parties with additional methods by which to file appeals and that there are laws and rules of professional conduct that would deter and punish this conduct.

Some stakeholders also stated that the regulations do not address cases where a party alleges that an appeal was filed, however the Department has no record of receiving the appeal. These regulations are designed to determine the timeliness of appeals that the Department actually receives. This factual situation is more appropriately considered on a case-by-case basis, weighing the individual circumstances of each case, the credibility of the testimony and evidence presented by the appealing party and the case law concerning *nunc pro tunc* appeals to administrative agencies.

Purpose.

The amendments pertain to the administration of unemployment compensation appeals, revise the manner in which parties may file appeals and determine the timeliness of these appeals. The amendments reflect court decisions allowing various means of filing appeals and urging the Board to update its regulations for determining timeliness to reflect advances in technology. The proposed amendments codify the Board's existing and judicially accepted practice of allowing the filing of appeals by fax. They will provide additional means for parties to file appeals, including common carrier services and electronic transmission. The amendments will also set a uniform standard for determining the date of filing and timeliness of appeals or notices of appeal. This will result in a reduction in the number of hearings that the Board is required to conduct relating to timeliness of appeals and will assist the Board in meeting federal guidelines for timely issuance of unemployment compensation decisions.

Background.

A party in an unemployment compensation proceeding may appeal a determination of the Department to a Referee or a Referee decision to the Board within 15 days. 43 P.S. §§ 821(e) and 822. A party may file an appeal on a prescribed appeal form or through a written communication and notice advising the Department that the aggrieved party requests review of the decision. The

existing regulation, 34 Pa. Code § 101.82(c), recognizes only actual delivery to the Department or the Board, or an official U.S. postmark as the filing date. The Department has accepted appeals or notice of appeals through various other methods, including fax transmission and common carrier, and frequently receives appeals bearing a private postage meter mark.

Commonwealth Court recognized that the Board may interpret its regulations to allow delivery of appeals or notices of appeal by fax transmission under 34 Pa. Code § 101.82. However, the date of filing is the date that the faxed document is actually received by the Department or the Board. *George v. Unemployment Compensation Bd. of Review*, 767 A.2d 1124 (Pa. Cmwlth. 2001). This judicial interpretation could result in the rejection of an appeal that was faxed within the prescribed 15-day period but that was, nonetheless, received after the 15 days elapsed. Commonwealth Court has urged the Board to reconsider the effect of its regulations on parties who use common carriers and parties who do not place an official U.S. postmark on the envelope accompanying the appeal. *Copyright, Inc. v. Unemployment Compensation Board of Review*, 739 A.2d 219 (Pa. Cmwlth. 1999); *UGI Utilities, Inc. v. Unemployment Compensation Board of Review*, 776 A.2d 344 (Pa. Cmwlth. 2001).

Summary of Proposed Rulemaking.

Section 101.2 Definitions.

The amendments will add an additional definition of a *workforce investment office* as an office where the Department provides employment services under the Wagner-Peyser Act (29 U.S.C. §§ 49-49m). A Team Pennsylvania CareerLink may serve as this office.

Section 101.81 Filing of appeal from determination of Department.

The word *determination* will replace the word *decision* in the section heading to reflect the terminology contained in Sections 501 and 502 of the Law. (43 P.S. §§ 821 and 822). The amendments will alter § 101.81(a) by providing instructions to appealing parties regarding approved appeal forms. The parties may obtain information regarding the filing of an appeal from a Department office responsible for unemployment compensation or a Board office.

The description of the contents of the appeal form, formerly contained in subsection (a), will be placed in subsection (c) under these amendments. The

amendments remove the requirement that an appeal contain the appealing party's signature. This change will permit appeals filed by electronic transmission. The amendments change the term *decision* to *determination* to reflect the terminology of Sections 501 and 502 of the Law.

The amendments completely delete the current language of § 101.81(b). That section is amended to state that information about filing an appeal may be obtained from a Department office responsible for unemployment compensation or a Board office.

The amendments will add § 101.81(d), which will require the Department or the Board to docket and process appeals.

Section 101.81(e) is added under the amendments and will provide that any written notice that may reasonably be construed as an appeal will be processed as an appeal without requiring the appellant to complete an official appeal form.

Section 101.82. Time for filing appeal from determination of Department.

The section heading is amended with the addition of the words *time for filing* and the deletion of the phrase *filing of*. The word *determination* replaces *decision*.

The amendments will delete previous subsection (a) because this information will be contained in amended § 101.81(a). Subsection (a), as amended, will contain the information previously contained in subsection (b), which sets forth the 15-day appeal period.

Section 101.82(b) of the amendments sets forth acceptable methods of filing appeals and determination of the filing date according to the filing method used. Subsection (b)(1) will provide that an appeal may be personally delivered to a local employment office or the Board during their normal business hours. The filing date will be the date of personal delivery.

Subsection (b)(2) will provide that an appeal may be filed by United States Postal Service mail. The filing date will be the date of the official U.S. postmark appearing on the document, a U.S. Postal Service Form 3817 (Certificate of Mailing) or certified mail receipt. If there is no official U.S. postmark, U.S. Postal Service Form 3817 (Certificate of Mailing) or certified mail receipt, the date of a postage meter mark will determine the date of filing. If there is no legible postmark or postage meter mark, the date of filing will be the date of receipt indicated by the Department.

Subsection (b)(3) will allow appeals delivered by a common carrier, which is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board. The filing date will be the date that the document was delivered to the common carrier. A document or record prepared by the common carrier may be used as evidence of filing.

Subsection (b)(4) will provide for appeals filed by fax transmission. The transmission date imprinted by the Department or Board's receiving fax machine will be the date of filing. If no legible date appears, the date imprinted by the sender's fax machine will be the date of filing. If there is no legible date of transmission, the date of filing will be the date of receipt indicated by the Department.

Subsection (b)(5) will provide for appeals filed by electronic transmission. It places the risk of delay, disruption, interruption of electronic signals and readability of the document on the filing party. The date of filing will be the receipt date provided by the Department's information processing system. An appellant filing by electronic transmission will have to comply with the Department's instructions concerning format.

The amendments will delete existing sections 101.82(c) and (d).

Affected Persons.

The proposed amendments affect appealing parties, and their representatives, in unemployment compensation matters. These amendments provide these parties with increased flexibility in filing or delivering appeals and with an easily verifiable manner of determining whether an appeal was timely filed or delivered.

Fiscal Impact.

There is minimal fiscal impact associated with this proposed rulemaking. Parties will experience some potential savings, as these amendments will clarify the manner in which timeliness will be determined and therefore reduce the need for hearings and litigation regarding the timeliness of appeals.

Reporting, Recordkeeping and Paperwork Requirements.

The amendments will not increase paperwork for parties in unemployment compensation matters or the Department. The amended regulation will provide recognition for the technological improvements in submission of documents and

provide easier methods for transmitting appeals. The amended regulation acknowledges the acceptable means for filing appeals. It clarifies the date of filing for each of these methods. Parties who file an appeal without using the Department form will no longer be required to complete that form to perfect an appeal. The Department will still use its current forms, with updated instructions, and it will continue to ensure that an appeal is routed to the Board. Specifically, the Department will provide instructions on fax transmission and the appropriate format for electronic filing. There are no significant costs associated with the proposed amendments for the Commonwealth or to parties to unemployment compensation cases.

Effective Date.

The proposed rulemaking will be effective upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

Sunset Date.

There is no Sunset Date for these amendments. The Department will continuously monitor the filing of appeals or notices of appeals and the amendments' effectiveness. The Department will also monitor the filing of appeals to ensure that appeals are filed timely under the amendments and that the date of filing is accurately recorded.

Contact Person.

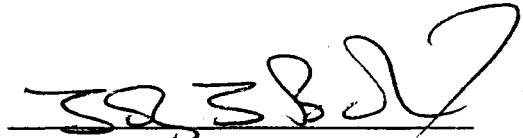
Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department within 30 days of publication in the *Pennsylvania Bulletin*. These may be submitted to Kelly K. Smith, Assistant Counsel, Office of Chief Counsel, Department of Labor and Industry, 10th Floor, Labor and Industry Building, 7th & Forster Streets, Harrisburg, Pennsylvania, 17121. Comments may also be e-mailed to kellsmith@state.pa.us or faxed to (717) 783-5027.

Regulatory Review.

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of this proposed rulemaking on Sept. 12, 2002 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Labor and Industry Committee and the House Labor Relations

Committee. In addition to submitting the proposed rulemaking, the agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

Under Section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria, which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the agency, the General Assembly and the Governor of objections raised.

A handwritten signature in black ink, appearing to read 'J. Butler', is written over a horizontal line.

Johnny J. Butler
Secretary

FISCAL NOTE:

Annex A

TITLE 34. DEPARTMENT OF LABOR AND INDUSTRY

PART VI. UNEMPLOYMENT COMPENSATION

CHAPTER 101. GENERAL REQUIREMENTS – PART IV

Subchapter A. GENERAL PROVISIONS

§ 101.2. Definitions.

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

Board – The Unemployment Compensation Board of Review.

Day – A calendar day.

Employment office – A public employment office or branch thereof, operated by the Department or by another state or by the Federal Government under agreement with the Department.

Party – The Department, the claimant, the last employer of the claimant and another employer affected by the appeal proceedings.

Referee – A referee of the Board.

Tribunal – The Board or one of its referees.

Workforce investment office – An office where the Department provides employment services under the Wagner-Peyser Act (29 U.S.C. §§ 49-49m). A workforce investment office may be identified as a Team Pennsylvania CareerLink.

Subchapter C. APPEALS FROM [DECISION] DETERMINATION
OF DEPARTMENT

§ 101.81. Filing of appeal from [decision] determination of Department.

(a) Department-provided appeal forms may be obtained from a Department office responsible for unemployment compensation, a workforce investment office or the Board's appeals system administrator in Harrisburg.

(b) Information about filing an appeal may be obtained from a Department office responsible for unemployment compensation or an office of the Board.

[(a)] (c) An appeal from a [decision] determination of the Department shall be filed [in a local employment office] with a Department office responsible for unemployment compensation, a workforce investment office or a Board office and shall [include] contain the following information [furnished by appellant]:

- (1) The name and address of the claimant.
- (2) The social security number of the claimant, if known.
- (3) The date of the [decision] determination which is being appealed.
- (4) The reasons for appeal.
- (5) The [signature] name and address of the appellant.

[(b) Assistance in completing the appeal form and perfecting the appeal may be obtained at a local employment office or at an office of the Board with the following information to be furnished by the local employment office representative:

- (1) The appeal number.
- (2) The nature of the decision form which appeal is being filed.
- (3) The date of the application of claimant for benefits or claim weeks.
- (4) The name and address of employers who have filed information in writing, and the date thereof, which might raise a question as to the eligibility of the claimant.
- (5) The name and address of the last employer of the claimant.
- (6) The date and number in which appeal was delivered by appellant, personally or by mail.
- (7) The signature of the local employment office representative.]

(d) Upon receipt of an appeal, the Department or the Board will docket and process the appeal form.

(e) The Board will consider a written objection to the Department's determination as an appeal and process it under subsection (c) if the appellant does not complete the Department-provided appeal form.

§ 101.82. [Filing of] Time for filing appeal from [decision] determination of Department.

[(a) Appeal forms approved by the Board may be obtained from a local employment office or the secretary of the Board at Harrisburg.]

[(b)] (a) [An appeal from a decision of the Department shall be filed within the prescribed time if it is filed] A party seeking to appeal a Department determination shall file an appeal in the form and manner [as] specified in § 101.81 (relating to filing of appeal from determination of Department) and this [part] section on or before the 15th day after the date on which notification of the decision of the Department was delivered personally to the appellant or mailed to him at his last known post office address.

(b) A party may file an appeal by any of the following methods:

(1) Personal delivery to a workforce investment office or to the Board. The filing date will be the date the appeal was personally delivered to the workforce investment office or Board, during their normal business hours.

(2) United States mail. The filing date will be determined as follows:

(i) The date of the official U.S. Postal Service postmark on the envelope containing the appeal, a U.S. Postal Service Form 3817 (Certificate of Mailing) or a U.S. Postal Service certified mail receipt.

(ii) If there is no official U.S. Postal Service postmark, U.S. Postal Service Form 3817 or U.S. Postal Service certified mail receipt, the date of a postage meter mark on the envelope containing the appeal.

(iii) If the filing date cannot be determined by any of the above methods, the filing date will be the date recorded by the Department, the workforce investment office or the Board when it receives the appeal.

(3) Common carrier. An appeal may be delivered by a common carrier of property which is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board. The date of filing is the date the document was delivered to the common carrier, as established by a document or other record prepared by the common carrier in the normal course of business.

(4) Fax transmission. The filing date will be determined as follows:

(i) The date of receipt imprinted by the Department, the workforce investment office or the Board's fax machine.

(ii) If the Department, the workforce investment office or the Board's fax machine does not imprint a legible

date, the date of transmission imprinted on the faxed appeal by the sender's fax machine.

(iii) If the faxed appeal is received without a legible date of transmission, the filing date will be the date recorded by the Department, the workforce investment office or the Board when it receives the appeal.

(5) Electronic transmission other than fax transmission. The date of filing is the receipt date recorded by the Department, the workforce investment office or the Board's information processing system, if the electronic record is in a form capable of being processed by that system. A party filing by electronic transmission shall comply with Department instructions concerning format. A party filing an appeal by electronic transmission is responsible for using the proper format and for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

[(c) Use of the prescribed appeal form is not mandatory to initiate an appeal. The following procedure may be followed:

(1) A written notice specifically advising that the interested party thereby files an appeal or requests review of decision, delivered or mailed to a representative of the Department or Board, within the

prescribed 15-day appeal period, shall constitute an appeal from the decision of the Department and will be processed accordingly without requiring the appellant to complete the appeal form.

(2) A written notice that may reasonably be construed as a request for an appeal, delivered or mailed to a representative of the Department or Board, within the prescribed 15-day appeal period, advising that the interested party is aggrieved and apparently desires a review of the decision, shall be deemed to initiate an appeal and shall constitute an appeal from the decision of the Department, if the appellant subsequently perfects the appeal by filing a completed appeal form within a reasonable time after instructions for filing the appeal form have been delivered or mailed to him at his last known post office address. (In order to expedite the disposition of claims, the interested party will be requested to return the completed appeal form within 15 days after instructions for filing the appeal have been delivered or mailed to him.)]

[(d) The date of initiation of an appeal delivered by mail, either on the prescribed appeal form or by any form of written communication, shall be determined from the postmark appearing upon the envelope in which the appeal form or written communication was mailed.]



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

THE SECRETARY

September 12, 2002

The Honorable John R. McGinley
Independent Regulatory Review Committee
14th Floor, Harristown II,
333 Market Street
Harrisburg, PA 17120

**Re: Proposed Rulemaking Labor & Industry
Unemployment Compensation Board of Review No. 12-59**

Dear Chairman McGinley:

Enclosed is proposed rulemaking that will amend the current provisions for filing appeals in unemployment compensation matters. Labor and Industry prepared amended regulations which recognize modern methods of filing appeals and provide straightforward rules for determining the timeliness of the appeal, based upon the method of filing used. The changes were drafted based upon, in part, Commonwealth Court cases.

The proposed rulemaking will amend the *Pennsylvania Code* (34 Pa. Code, Chapter 101).

Written comments, suggestions or questions should be directed to Kelly K. Smith, Assistant Counsel, Office of Chief Counsel, Department of Labor & Industry, 10th Floor Labor & Industry Building, Seventh and Forster Streets, Harrisburg, Pennsylvania 17121 (Telephone: 717-787-4186; Fax: 717-787-5027; E-mail: kellsmith@state.pa.us).

The Department's staff will provide your staff with any assistance required to facilitate a thorough review of this proposal.

Sincerely,

A handwritten signature in black ink that reads "JJ Butler". The signature is written in a cursive style with a large, sweeping flourish at the end.

Johnny J. Butler
Secretary

Enclosures

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

I.D. NUMBER: 12-59
 SUBJECT: Appeals from Determinations of Department
 AGENCY: DEPARTMENT OF LABOR & INDUSTRY

2002 12 11:37
 DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

- X 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
9/12/02	<i>Leticia Carns</i>	HOUSE COMMITTEE ON LABOR RELATIONS
9/12/02	<i>Maryann Eckhart</i>	
9/12/02	<i>Judy Merice</i>	SENATE COMMITTEE ON LABOR & INDUSTRY
9/12/02	<i>P. Scott</i>	
9/12/02	<i>St. Helbert</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
9/12/02	<i>C. ...</i>	LEGISLATIVE REFERENCE BUREAU

September 9, 2002