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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 2, 2002

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

Re: Regulation #12-59 (IRRC #2290)
Department of Labor and Industry
Appeals from Determinations of Department

Dear Secretary Butler:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable Robert J. Flick, Majority Chairman, House Labor Relations Committee
Honorable Robert E. Belfanti, Jr., Democratic Chairman, House Labor Relations Committee
Honorable Gibson E. Armstrong, Chairman, Senate Labor and Industry Committee
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee

Comments of the Independent Regulatory Review Commission

on

Department of Labor and Industry Regulation No. 12-59

Appeals From Determinations of Department

December 2, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Labor and Industry (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 101.81. Filing of appeal from determination of Department. – Reasonableness; and Clarity.

Subsection (a)

This subsection describes the process for obtaining Department-provided appeal forms. We have three concerns.

First, this subsection as well as Section 101.81(c), includes the term “Department office responsible for unemployment compensation.” This term is unclear. How will a petitioner know if a Department office is responsible for unemployment compensation? For clarity, the Department should define the term “Department office responsible for unemployment compensation” in the final-form regulation.

Second, the phrase “Department-provided” is redundant and should be eliminated, as the forms can be obtained from a Department office.

Third, could an individual obtain these forms from any other source, including the Department’s Website? This should be specified in the final-form regulation.

Subsection (b)

This subsection reveals where an individual would obtain information about filing an appeal. We have five concerns.

First, this subsection provides that the aforementioned information may be “obtained from a Department office responsible for unemployment compensation or an office of the Board.” Are there any other places where an individual could obtain this information?

Second, this subsection states, “Information about filing an appeal may be obtained from a Department office responsible for unemployment compensation or an office of the Board.” We understand that assistance will be available at service centers. These centers are reachable only

by phone. For clarification, the Board should include information on how to receive assistance with the appeal instructions that accompany the notice of determination.

Third, is the Department able to make available this information on its Website? The Department should explain.

Fourth, Subsection (a) states that an appeal form may be obtained from a workforce investment office (WIO). Yet, Subsection (b) does not include a WIO as a place where an individual can obtain information about filing an appeal. Can one obtain this information from a WIO?

Finally, current Subsection (b) states that assistance can be obtained in completing an appeal form at a local employment office or at an office of the Board. Why doesn't the revised Subsection (b) allow for similar assistance?

Subsection (c)

Under this subsection, the Department describes the process for filing an appeal and the content of the appeal forms. Why is the signature of the local employment office representative, formerly found in Section 101.81(b)(7) being deleted? The Department should explain.

2. Section 101.82. Time for filing appeal from determination of Department. – Clarity; Reasonableness; Implementation procedures.

Paragraph (b)(1)

This paragraph sets forth the requirements for personal delivery of an appeal. We understand that the Board considers deliveries from private couriers "personal delivery." For clarity, the term "private courier" should be included as a method of personal delivery in this paragraph. For further clarity, the Board should consider defining the term "personal delivery," and including the term "private courier."

Paragraph (b)(3)

This paragraph allows for delivery by common carrier. It states the following:

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 Transportation Board. The date of the 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.

We have four concerns.

First, the phrase, "subject to the authority" is vague. We understand that common carriers are not registered, but are regulated by the Pennsylvania Public Utility Commission (PUC). How would a person know if the carrier they are using is subject to the authority of the PUC?

Second, the phrase "or other record" is vague. The final-form regulation should specify what other type of proof of delivery is acceptable.

Third, we question the reasonableness of allowing the filing date to be established by the delivery date to a third party. To illustrate this concern, we have reviewed delivery documentation included in a package delivered to our office by a major common carrier. The documentation includes a "ship date" and a "deliver by" date. It does not include the date that

the package was delivered to the common carrier. How would the Department resolve this discrepancy?

Finally, if the delivery date cannot be established by documents or other records of the common carrier, how will the Department determine a filing date? We recommend that this paragraph include a provision similar to § 101.82(b)(2)(iii), which states that if the date cannot be determined, the filing date will be the date the appeal was received by the Department.

Paragraph (b)(4)

This paragraph allows for filing by fax transmission. We have three concerns.

First, if there is a discrepancy between the time noted by the Department's fax machine and the sender's fax machine, how will that discrepancy be resolved?

Second, will faxes received after the close of normal business hours be considered timely?

Third, we believe that the sender should be aware of the risk involved with sending an appeal via a fax transmission. We recommend that this paragraph include a provision similar to the provision found in Paragraph (b)(5), relating to electronic transmission other than fax transmission, which states that the sender "accepts the risk that the appeal may not be properly or timely filed."

Paragraph (b)(5) Electronic transmission other than fax transmission

This paragraph allows for filing by electronic transmission other than fax transmission. We have three concerns.

First, the phrase "information processing system" is vague. Does this include e-mail and voice mail? The final-form regulation should specify what types of electronic transmission are acceptable.

Second, this paragraph requires a person filing electronically to "comply with Department instructions concerning format." The final-form regulation should include the necessary instructions.

Third, would an electronic transmission have to be sent to a specific e-mail address? If so, that e-mail address should be included in the final-form regulation. In addition, if the transmission is sent to an incorrect e-mail address at the Department, would it be considered properly filed?

3. Miscellaneous. – Clarity.

Title 34 Pa. Code § 101.102 reference Sections 101.81 and 101.82 and should be revised to reflect the new titles included in this rulemaking.

INDEPENDENT REGULATORY REVIEW COMMISSION

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Date: December 2, 2002
of Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Labor & Industry's regulation #12-59 (IRRC #2290). 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: *Nancy Cobb for Brian Abela* Date: *12/2/02*

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REVIEW COMMISSION
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