

Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Department of Labor and Industry
Bureau of Workers' Compensation

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

12-67

IRRC Number: 2484

(3) Short Title

General Provisions

(4) PA Code Cite

34 Pa. Code Chapter 121

(5) Agency Contacts & Telephone Numbers

Primary Contact: John T. Kupchinsky, Director, Bureau of Workers' Compensation; 717-783-5421

Secondary Contact: Thomas J. Kuzma, Deputy Chief Counsel, Bureau of Workers' Compensation; 717-783-4467

(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.

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau) is issuing these amendments to update and clarify the existing regulations that govern the administration of the Workers' Compensation Act (act) and related procedures.

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

The Department issues these final-form regulations under the authority contained in sections 401.1 and 435(a) of the act (77 P.S. §§ 710 and 991(a)), and section 2205 of The Administrative Code of 1929 (71 P.S. § 565).

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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 final-form regulations are not mandated by law, court order or federal regulation.

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

The existing regulations were adopted on March 15, 1974 and have not been revised in many years, with a few exceptions. The final-form regulations will provide updated guidance to employees, employers and workers' compensation insurers in their transactions with the Bureau. Updating the regulations is imperative to accurately reflect the Bureau's administration of the act and to reflect technological enhancements common in the workers' compensation community.

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

Nonregulation would lead to growing inconsistencies between how the Bureau operates and the expectations of the workers' compensation community.

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

Employees, employers, workers' compensation insurers and the Bureau will benefit from these regulations. The final-form regulations will increase the efficiency and effectiveness of the parties' transactions with the Bureau.

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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.)

No one will be adversely affected by the regulations.

(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.)

The following persons, groups or entities will be required to comply with the regulations: approximately 300 workers' compensation insurers, including the State Workers' Insurance Fund; approximately 800 self-insured employers, including the Commonwealth; all other employers subject to the act; and Bureau employes.

(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.

On June 11, 2004, a stakeholder meeting was held. The following groups were invited to the stakeholder meeting: American Insurance Association; Alliance of American Insurers; Pennsylvania Trial Lawyers Association; Pennsylvania Bar Association Workers' Compensation Law Section; Pennsylvania Bar Association Workers' Compensation Liaison Committee; Insurance Federation of Pennsylvania, Inc.; Pennsylvania Self-Insurance Association; Pennsylvania Defense Institute Workers' Compensation Committee; and Pennsylvania AFL-CIO. Additionally, as a result of the invitation to the June 11, 2004 meeting, written comments were received from the following groups: The Insurance Federation of Pennsylvania, Inc. (submitted by Samuel R. Marshall, President & CEO); the Pennsylvania Trial Lawyers Association (submitted by Richard J. Schubert, Esquire, President); and the Workers' Compensation Office of Adjudication (submitted by David Cicola, Director). Actual attendees at the June 11, 2004 meeting were Lawrence Chaban on behalf of the Pennsylvania Trial Lawyers Association and Samuel R. Marshall on behalf of The Insurance Federation of Pennsylvania, Inc.

At 35 Pa. B. 28 (July 9, 2005), the Department published the notice of proposed rulemaking. As a result, the Department received written comments from the following: Lawrence R. Chaban, Esquire, on behalf of the Pennsylvania Trial Lawyers Association; Workers' Compensation Judge Todd B. Seelig, on behalf of the Pennsylvania Workers' Compensation Judges' Professional Association; Director of Adjudication David A. Cicola, on behalf of the Workers' Compensation Office of Adjudication; Samuel R. Marshall, Esquire, on behalf of The Insurance Federation of Pennsylvania, Inc.; Thomas C. Lowry, Esquire; Matthew Welch, Claims Specialist; Art Mann; and Marc S. Jacobs, Esquire. The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated September 7, 2005. IRRC suggested that the Annual Claims Status Report, Form LIBC-774, be shared with the regulated community prior to submission of the final-form regulations. The Department did so and also engaged in a helpful dialogue with Mr. Marshall, on behalf of the Insurance Federation of Pennsylvania, Inc., to create an agreeable final version of this report. All written comments were considered and, in response to comments received, changes have been made in the final-form 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.

No significant costs or savings are anticipated. Obtaining or creating the new form, the Annual Claims Status Report, Form LIBC-774, as well as the modified form, the Final Statement of Account of

Compensation Paid, Form LIBC-392A, may be an insignificant cost to employers and insurers. However, this will be offset by the time savings and convenience of the new form as well as the anticipated, future electronic filings contemplated in the regulations. These changes will ultimately lead to system-wide savings by allowing more accurate accounting and better reporting and maintenance of data regarding claims, which in turn will allow insurers to avoid unnecessary exposure to liability, prevent delays in the Bureau's processing of future filings and expedite claimants' proper and timely receipt of benefits. *See* number 28.

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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.

No significant costs or savings are anticipated. Obtaining or creating the new form, the Annual Claims Status Report, Form LIBC-774, as well as the modified form, the Final Statement of Account of Compensation Paid, Form LIBC-392A, may be an insignificant cost to local governments to the extent they are employers. *See* numbers 17 and 28.

(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.

No significant costs or savings are anticipated. Obtaining or creating the new form, the Annual Claims Status Report, Form LIBC-774, as well as the modified form, the Final Statement of Account of Compensation Paid, Form LIBC-392A, may be an insignificant cost to the Commonwealth to the extent it is an employer. *See* numbers 17 and 28.

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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.

There are no means to estimate any slight cost associated with one new form and one modified form.

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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
Workers' Comp. Administration Fund	\$ 50,025,529.00	\$ 48,803,730.00	\$ 51,331,446.00	\$ 60,231,000.00 (appropriation for year)

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

There are no adverse effects and costs.

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

Non-regulatory alternatives cannot create a legally enforceable standard and therefore were not considered. These regulations provide updated information and guidance to an already existing act and regulations.

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

Alternative regulatory schemes were not considered, as it is appropriate that the current regulations be updated.

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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.

There are no comparable federal standards.

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

Comparison to other states' provisions is impractical because statutory requirements and systems differ from state to state.

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

These regulations will amend 34 Pa. Code Chapter 121 (relating to general provisions) by updating and clarifying the existing regulations that govern the administration of the act and related procedures.

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

It is not anticipated that any other meetings will be scheduled.

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(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 final-form regulations do not impose any significant additional reporting, record keeping or paperwork requirements on either the Commonwealth or the regulated community, but will result in increased convenience and time savings for insurers. The final-form regulations require the creation of only one new form, the Annual Claims Status Report, Form LIBC-774, as well as the modification of another form, the Final Statement of Account of Compensation Paid, Form LIBC-392A. However, the annual filing of a Statement of Account of Compensation Paid, Form LIBC-392, has been eliminated. These changes will reduce the number and frequency of forms required for filing by insurers, since the new Annual Claims Status Report, Form LIBC-774, is a more convenient, one-time annual form to address the status of all of the insurer's applicable claims, while the former Statement of Account of Compensation Paid, Form LIBC-392, was required on piece-meal basis throughout the year for each individual claim. See number 17.

(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.

There is no need for special provisions.

(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 final-form regulations will be immediately effective when published in the *Pennsylvania Bulletin* as final regulations. These regulations will require no new licenses, permits or approvals.

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

The Department will continue to monitor the impact and effectiveness of the regulations. Changes to the act and court decisions may lead to amendment of the regulations.

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

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

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

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

BY:
DEPUTY ATTORNEY GENERAL

DATE OF APPROVAL

Department of Labor & Industry
(AGENCY)

DOCUMENT / FISCAL NOTE NO. 12-67

[Signature]

DATE OF APPROVAL
Andrew C. Clark
Deputy General Counsel
MAY 15 2007

DATE OF ADOPTION:

BY: *[Signature]*
Stephen M. Schmerin

TITLE:

Secretary

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

Check if applicable
Copy not approved.
Objections attached.

FINAL-FORM REGULATION

Title 34. LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 121]

GENERAL PROVISIONS

FINAL-FORM REGULATION
DEPARTMENT OF LABOR AND
INDUSTRY

[34 PA. CODE CH. 121]

General Provisions

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), amends Chapter 121 (relating to general provisions) to read as set forth in Annex A. The rulemaking updates and clarifies the existing regulations that govern the Bureau's administration of the Workers' Compensation Act (act) (77 P. S. §§ 1-1041.4 and 2501--2506) and the procedures utilized by employees, employers and insurers.

Statutory Authority

This final-form regulation is published under the authority in sections 401.1 and 435(a) of the act (77 P. S. §§ 710 and 991(a)) and section 2205 of The Administrative Code of 1929 (71 P. S. § 565).

Background

Chapter 121 was adopted on March 15, 1974, and has not been revised recently, with a few exceptions. The most recent regulatory amendments followed the act of November 26, 1997 (P. L. 530, No. 57), which amended sections 306.2, 443 and 446 of the act (77 P. S. §§ 517, 999 and 1000.2). The Department then amended §§ 121.1, 121.22 and 121.23 of its regulations (relating to general; subsequent injury fund; and supersedeas fund). Further, the Department added §§ 121.31--121.35.

On June 11, 2004, a stakeholder meeting was held. All comments and suggestions received as a result of this meeting were reviewed and considered. At 35 Pa. B. 28 (July 9, 2005), the Department published the notice of proposed rulemaking. As a result, the Department received written comments from the following: Lawrence R. Chaban, Esquire, on behalf of the Pennsylvania Trial Lawyers Association; Workers' Compensation Judge Todd B. Seelig, on behalf of the Pennsylvania Workers' Compensation Judges' Professional Association (PWCJPA); Director of Adjudication David A. Cicola, on behalf of the Workers'

Compensation Office of Adjudication; Samuel R. Marshall, Esquire, on behalf of The Insurance Federation of Pennsylvania, Inc.; Thomas C. Lowry, Esquire; Matthew Welch, Claims Specialist; Art Mann; and Marc S. Jacobs, Esquire. The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated September 7, 2005. In response to comments received, changes have been made in the final-form regulation.

Purpose

The rulemaking updates and clarifies the practices of the Bureau in the administration of the act and of employees, employers, workers' compensation insurers and other interested parties in their transactions with the Bureau.

Summary of Final-Form Regulations and Responses to Comments

The Department amends § 121.1 to include definitions of "agreement," "Board," "claimant," "Disease Law," "employer" and "first report of injury." IRRC commented that two statutory definitions of "employer" should not be combined in one regulatory definition. Accordingly, the reference to section 103 of the act (77 P. S. § 21) has been deleted in the definition of "employer." IRRC also questioned whether the State Workers' Insurance Fund (SWIF) is included in the definition of "insured employer." Although SWIF meets the definition of an insured employer, it has been added specifically to the definition of "insured employer."

Mr. Jacobs commented that the definition of "employer" conflicts with the Commonwealth Court's decision in *Kramer v. WCAB (Rite Aid Corp.)*, 794 A.2d 953 (Pa. Cmwlth. 2002). However, the statutory definition has been adopted here, which continues to be a viable definition of "employer." Additionally, the Pennsylvania Supreme Court overturned this Commonwealth Court decision. *Kramer v. WCAB (Rite Aid Corp.)*, 883 A.2d 518 (Pa. 2005). To clarify the references to the employer's first report of injury, which was formerly known as the Employer's Report of Occupational Injury or Disease, Form LIBC-344, the Department has added a general definition for the term "first report of injury" in the final-form regulation.

The Department deletes § 121.2 (relating to superseded provisions) because it is unnecessary.

The Department amends § 121.3 (relating to completion of forms) to better reflect the requirements for filing forms. Also, the Department adds subsection (c) to clarify the Department's ability to require electronic

filing and subsection (d) to clarify how to determine a filing date. IRRC commented that "electronic format" in subsection (a) and "electronic means" in subsection (c) be defined by specific methods. However, the Department believes that not specifically defining these terms enables filing with the Department to evolve as technology evolves. Additionally, since the language in subsection (a) clearly states that forms must be in the format prescribed by the Bureau, this subsection does notify filers of the means by which different forms are to be filed.

IRRC also commented that the Bureau should inform a filer why a form is returned. Accordingly, language has been added in subsection (b) that requires the Bureau to give a reason for the return of a form. Finally, IRRC commented that subsection (d) should explain the filing date if mail is not used for filing. Language has been added to subsection (d) clarifying that the Bureau receipt date is the filing date for all filings that do not fall under the first two sentences of subsection (d). This comports with current practice and a state Supreme Court case. *Sellers v. WCAB (HMT Construction Svcs., Inc.)*, 713 A.2d 87 (Pa. 1998).

Mr. Marshall commented that the 10-day time period in subsection (b) for the preservation of a filing date is insufficient. Mr. Marshall also commented that the period should be specified to run from the postmark date of the Department's return. The Department agrees with Mr. Marshall's suggestion regarding extending the 10-day period and has increased that time period to 14 days. However, the Department will continue to use the Department's correspondence date, rather than the postmark date, for determining the timing of returns because this method is consistent with all other Department mailings.

Mr. Marshall also commented that the Department should not have the ability to limit filing through electronic means and should be required to accept *any* electronic filings. The Department does not agree with this approach because the Department first must have the capability in place in order to receive and accept an electronic filing. It does not have the capability to accept certain types of electronic filings at this time. The Department will continue to proceed cautiously, as it has in the past, when implementing new forms for electronic filing, by soliciting industry comments beforehand. Mr. Marshall further suggested that subsection (c) be revised to require that future electronic filing requirements introduced by the Department must be done by subsequent regulation in order to insure the practicality of future electronic submissions for all parties. The Department does not believe that a regulation requiring a regulation would be practical. However, insofar as subsection (c) appears to be superfluous in light of subsection (a) of this section, the Department has removed that proposed language from subsection (c).

The Department adds § 121.3a (relating to computation of time) to explain how a period of time will be computed under Chapter 121.

The Department adds § 121.3b (relating to providing workers' compensation information) to require an employer to provide general workers' compensation information to every employee at the time of hire and at the time of injury. This new mandatory provision provides employees with the opportunity to learn basic workers' compensation information that otherwise may be difficult to obtain.

The PWCJPA commented that the section should include when the information must be provided to the employee. The Department agrees and has included the requirement that this workers' compensation information be provided at the time of hire and time of injury. This allows all employees access to the information when needed.

IRRC commented that the phrase "by your employer" should be added in subsection (b) for clarity. The Department has made that change. Mr. Marshall commented that the initial, proposed requirement that this information be posted at an employer's primary places of business would make it difficult for insurers to monitor employer compliance. The Department agrees and has removed the general requirement to post this information. The Department will require only that employers provide this information to employees at the time of hire and injury. IRRC and Mr. Marshall also commented that the phrase "sites of employment" with regard to the initial posting requirement lacked clarity. Since the information no longer needs to be posted, the phrase has been removed.

Mr. Marshall also suggested that the requirement of referencing the physician panel notice in subsection (b)(3) be removed. To avoid potential confusion with the existing requirements in the Medical Cost Containment regulations, the Department has removed this reference.

Mr. Lowry suggested that the last sentence in subsection (b)(3) be modified to inform the employee that he will be asked to sign a written acknowledgement form regarding the employer's list of providers. However, since the reference to that list is being removed from this subsection, and because this information also is separately addressed in the Medical Cost Containment regulations, the reference has not been added.

The Department deletes § 121.4 (relating to reproduction of forms) because it currently contains information that is duplicated in § 121.3(a).

The Department amends § 121.5 (relating to reporting injuries) to correct the requirements regarding filing a first report of injury. The

amendment eliminates language in subsections (b) and (e) regarding disability continuing more than or beyond the entire day, shift or turn. The language in new subsection (c) conforms to section 438 of the act (77 P. S. § 994). Also, the Department deletes unnecessary language discussing variances and to clarify existing language.

Mr. Lowry commented on the change to subsection (a)(2) requiring an employer to file a first report of injury within 7 days. However, this change directly parallels the mandate in section 438 of the act. (77 P.S. § 994) that the report be filed within 7 days. Additionally, the change does not affect the requirement that an employer respond within 21 days, as set forth in section 406.1 of the act. (77 P.S. § 717.1).

Mr. Marshall commented that the definition of disability in subsection (c) should be clarified so that it is only linked to the filing of the first report of injury. The Department has made this clarification.

The Department deletes § 121.6 (relating to supplemental reports) because the process described in this section is obsolete.

The Department amends § 121.7 (relating to notice of compensation payable) by splitting proposed § 121.7 into two parts: § 121.7 (relating to notice of compensation payable), which focuses solely on the Notice of Compensation Payable; and, § 121.7a (relating to notice of temporary compensation payable), which sets out requirements for filing a Notice of Temporary Compensation Payable. The Department believes that this separation improves the clarity of the two provisions. All of the applicable provisions of proposed § 121.7 that referenced Notices of Temporary Compensation Payable were moved into § 121.7a. Accordingly, any changes explained below in § 121.7 also are reflected in § 121.7a, where applicable.

The Department amends § 121.7(b) to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Notice of Compensation Payable, Form LIBC-495, except in the case of an estimated notice or a notice filed in a medical only case. The Department deletes language in § 121.7(b) regarding injuries, and references the term "disability" in § 121.7(a) to conform to section 406.1 of the act (77 P. S. § 717.1). The Department also allows an employer to file an estimated or amended Notice of Compensation Payable, Form LIBC-495. Finally, the Department adds subsection (e) to § 121.7 to allow an employer to file a Notice of Compensation Payable, Form LIBC-495, in medical-only cases.

The Department adds § 121.7a(b) to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Notice of Temporary Compensation Payable, Form LIBC-501. The Department

also allows an employer to file an amended Notice of Temporary Compensation Payable, Form LIBC-501.

IRRC commented that amended or estimated notices should be modified to have checkboxes. However, the Department believes there is sufficient room at the top of the form for an insurer to indicate that the form is "amended" or "estimated." When an electronic version of a Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, becomes available, checkboxes will be included for an insurer to indicate whether a form is "amended" or "estimated."

IRRC also commented that § 121.7(e) should be split into two subsections because subsection (e) contains the subjects of Notices of Compensation Payable, Notices of Temporary Compensation Payable and Supplemental Agreements. The Department has addressed this issue by splitting proposed § 121.7 into two parts: § 121.7 and § 121.7a.

IRRC stated that § 121.7(f) (now § 121.7(e)) should state which forms are to be filed in medical-only cases. The Department does not believe this is necessary because current case law addresses this issue and is subject to change.

Mr. Chaban commented that an employer should have no greater right to amend a Notice of Temporary Compensation Payable than it does to amend a Notice of Compensation Payable. However, these documents are different under the act. Specifically, the Notice of Temporary Compensation Payable is not an admission of liability on a claim, but rather may be issued by an employer without prejudice during its investigation where there is uncertainty regarding compensability or extent of liability.

Mr. Chaban also commented that the filing of a Notice of Compensation Payable should be mandatory, not permissive, under § 121.7(f) (now § 121.7(e)). However, case law shows that this is not the only form that may be filed in order to avoid penalties.

Mr. Lowry commented that the language in § 121.7(f) (now § 121.7(e)) improperly limits its use to injuries that have not resulted in "lost time from work," in part by its failure to explain the impact of the 7-day waiting period. Since the regulation is meant simply to recognize the use of a Notice of Compensation Payable in a medical-only matter, the Department does not believe such additional explanation is necessary.

Mr. Marshall commented that subsection (a) of § 121.7 (now §§ 121.7 and 121.7a) should include a change to reflect that a filing is

triggered when the *insurer* knows of the injury by modifying the filing requirement to "no later than 21 days from the date 'that' employer had notice or knowledge." However, since neither the act nor case law clearly distinguishes between the employer and insurer in this regard, the Department does not believe such a distinction is warranted.

Mr. Marshall also stated that § 121.7 (now §§ 121.7 and 121.7a) is confusing as to whether an insurer can issue a document and payment to an employee within 21 days if the employer has not notified its insurer. However, section 406.1 of the act (77 P.S. § 717.1) requires joint investigation and payment by the employer and insurer.

Mr. Marshall also commented that there is confusion regarding possible conflict with the reporting requirements in the various subsections of § 121.7. The Department agrees and has revised this section to indicate that the filing of a Statement of Wages is not required when the Notice of Compensation Payable is estimated under § 121.7(b), or when a medical-only Notice of Compensation Payable is filed under § 121.7(e).

The Department amends § 121.8 (relating to agreements) to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336. The Department also allows an employer to file an estimated or amended Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

The Department amends § 121.9 (relating to agreements-fatal cases) to clarify that death must occur from the injury, not within 7 days of the injury, to be compensable. Also, the Department amends § 121.9 to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Agreement for Compensation for Death, Form LIBC-338. The Department also allows an employer to file an estimated or amended Agreement for Compensation for Death, Form LIBC-338. For consistency within these regulations, the Department has added language requiring that this form be completed before being signed in subsection (a).

The Department deletes § 121.10 (relating to supplemental agreements) because supplemental agreements are discussed in proposed § 121.17(b) (relating to termination).

The Department amends § 121.11 (relating to supplemental agreements--fatal) to clarify the circumstances on which a change of compensation may be based. IRRC commented that, in subsection (b), the "may" should be changed to "shall." The Department agrees and that change has been made.

The Department amends § 121.12 (relating to Department review of agreements, and notices of compensation payable) to require an amended version of an agreement or Notice of Compensation Payable, Form LIBC-495, when a correction of errors results in an increase of an employee's wage or compensation. Additionally, the Department amends § 121.12 to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every amended form under this section. IRRC commented that the "may" in subsection (a) should be changed to "shall." The Department agrees and that change has been made.

The Department amends §§ 121.13 and 121.14 (relating to denial of compensation; and weekly wage, occupational disease cases) to clarify existing language.

The Department amends § 121.15 (relating to compensation payable) to clarify that death must occur from the injury, not within 7 days of the injury, to be compensable.

The Department amends § 121.16 (relating to statement of compensation paid) to eliminate the filing of an annual Statement of Account of Compensation Paid, Form LIBC-392. The Department instead requires the filing of an Annual Claims Status Report, Form LIBC-774, on which an insurer will verify information on its claims. The Department also amends § 121.16 to require the filing of a Final Statement of Account of Compensation Paid, Form LIBC-392A, immediately after the final payment of compensation. IRRC suggested that the Annual Claims Status Report form be shared with the regulated community prior to submission of the final-form regulations. The Department shared this information and also engaged in a helpful dialogue to create an agreeable final version of this report.

Mr. Marshall questioned the Department's authority for requiring this filing and commented that the enforcement/provisions in subsections (a)(3) and (a)(4) of § 121.16 need to be reconciled with those found in § 121.27 (relating to orders to show cause). The Department believes that the proposed amendment to this section falls within the rulemaking authority provided in section 435(a) of the act (77 P.S. § 991), insofar as it is reasonably calculated to expedite the reporting and processing of cases and to insure full and proper payment of all compensation due. The Department does not believe that the specific enforcement provision regarding the failure to file this new form is inconsistent with the availability of the order to show cause provisions found in § 121.27.

IRRC, Mr. Marshall and Mr. Lowry further questioned the purpose and need for the new Annual Claims Status Report, Form LIBC-774, as well as the cost and additional paperwork which would be required for its

completion. The new report seeks to provide a method of annually updating and verifying the accuracy of Bureau and insurer files regarding the status of certain open workers' compensation cases and to ensure proper closure of the same where applicable. This annual report is intended to increase compliance with the act by verifying information concerning certain ongoing claims on which no activity has occurred. Insofar as an annual "accounting" was previously required on a claim-by-claim basis for all open claims through the filing of the Statement of Account of Compensation Paid, Form LIBC-392, the Department believes that this new format requiring a one-time annual filing will be less cumbersome and costly for insurers. The Department believes that this form will allow more accurate accounting and better reporting and maintenance of data regarding claims, which in turn will allow insurers to avoid unnecessary exposure to liability, prevent delays in the Bureau's processing of future filings and expedite claimants' proper and timely receipt of benefits. The form will also help to ensure the accuracy of data and statistics provided at the request of the Workers' Compensation Advisory Council in performing its duties under the act.

Mr. Marshall commented that the report should apply to claims opened between 3 and 4 years before the calendar report year. The Department agrees and has modified this section to state that the report shall include a list of all open claims which were initiated by the filing of a Bureau document other than a first report of injury, more than 3 calendar years before the calendar year in which the report is filed and on which no activity was reported to the Bureau during the calendar year immediately before the report year. In addition, the Department clarified that only open claims which were initiated during calendar year 2004 and thereafter may be listed in the Annual Claims Status Report. Additionally, the date when the Bureau will print and provide the form to insurers (subsection (a)(1)), as well as the date insurers are to complete and return the report to the Bureau (subsection (a)(2)), have been modified to March 1 and June 1, respectively, to allow all parties sufficient time for completion of this report. Mr. Marshall also suggested that the instructions for the form be written into the regulation, perhaps by incorporating the form itself into this section. While the inclusion of LIBC form instructions in a regulation is not practical, the Department has added more details to clarify the information that will be captured in the report.

The Department amends § 121.17 (relating to change in compensation) to explain the procedures for obtaining changes in compensation, including termination, suspension, modification and other changes. IRRC commented that the filing of the forms referenced in § 121.17 should be required. However, employers and insurers are not required to pursue the options in § 121.17, and therefore the filing of those forms should not be required. IRRC also commented that a Purdon's

citation should be included for the act sections in subsection (c). However, the sections are part of a form name. Therefore, no citation is needed. The Department has added reference to the Agreement for Compensation for Death, Form LIBC-338, in subsection (b) for consistency within the regulations.

Mr. Chaban commented that a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, should not be utilized for termination of compensation without sufficient warnings being placed on the form. He stated that most of the warnings on the Agreement to Stop Weekly Workers' Compensation Payments (Final Receipt), Form LIBC-340, should be reproduced on the Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337. However, the language in section 408 of the Act (77 P.S. § 732) specifically allows compensation to be terminated at any time by an agreement or supplemental agreement. Case law also currently supports the use of a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, in order to terminate a claimant's benefits. Further, unlike the Agreement to Stop Weekly Workers' Compensation Payments (Final Receipt), Form LIBC-340, which may be used only to stop the payment of indemnity payments, the Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, may be used for a variety of other purposes such as a reinstatement, modification or suspension of benefits, and the termination of both indemnity and medical benefits in certain circumstances. Therefore, placing any warnings on the Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, to address specific circumstances would not be practical or appropriate.

Mr. Jacobs commented that subsection (d) should be clarified to reflect the 90-day period that is the maximum time allowed for temporary compensation. The Department agrees and that change has been made.

The Department amends §121.18 (relating to subrogation procedure) to clarify existing language. IRRC commented that the phrase "third party" should be changed to the term "employee" in subsection (a). Additionally, Mr. Marshall commented that the phrase "third party" should be changed to the term "employer" in subsection (a). The Department agrees with IRRC and has made that change.

Mr. Lowry commented that he believes the Third Party Settlement Agreement, Form LIBC-380, is contradictory to controlling case law. However, the Department disagrees that the form and case law are contradictory. Nonetheless, Form LIBC-380 has since been modified with input from the legal community in order to clarify the form and simplify

its completion. Mr. Marshall suggested that, to avoid the need to file repetitious paperwork, the Department should eliminate the requirement found in subsection (b) of § 121.18 that a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, "shall" be filed where a credit was requested against future compensation payable. The Department agrees that filing this form no longer should be required, however the Department believes that the parties may still wish to do so. Therefore, subsection (b) has been amended to no longer require the filing of the document and to state that it "may" be filed in that instance.

The Department amends § 121.20 (relating to commutation of compensation) to clarify existing language and to change the reference from a "25-week period" to a "52-week period."

The Department amends § 121.21 (relating to coal diseases--claim and reimbursement) to require record retention for 3 years, instead of indefinitely. The Department also amends § 121.21 to clarify existing language. IRRC commented that the "required format" referenced in subsection (b)(1) should be explained in more detail or deleted. The Department has deleted this phrase and now only requires that the information in subsection (b)(1) be reported to the Department. IRRC commented that the regulation should state when the 3-year retention period begins. The Department agrees and has made it clear that records should be kept for 3 years from the date of each payment. IRRC also commented that the phrase "reasonable times" is vague and should be changed to "normal business hours." The Department agrees and has made this change.

The Department amends §§ 121.22 and 121.23 to clarify existing language.

The Department deletes § 121.24 (relating to approval of fees). The existing requirements concerning attorney fees are more appropriately addressed in Chapter 131 (relating to special rules of administrative practice and procedure before workers' compensation judges).

The Department amends § 121.25 (relating to delivery of compensation checks) to allow delivery of a claimant's compensation check to the claimant's attorney if the claimant and employer have executed an Authorization for Alternative Delivery of Compensation Payments, Form LIBC-10, or if a court otherwise orders delivery.

IRRC commented that the regulation should specify who is responsible for notifying counsel and the manner in which counsel of record will be notified. Mr. Marshall commented that the manner of the notice should be a copy of the Notice of Compensation Payable or Notice

of Temporary Compensation Payable. The Department agrees that the responsible party for notification should be included and has specified that the insurer or self-insured employer is responsible for sending notice to counsel of record. However, the Department has not specified the manner of notification because it believes that it is more appropriate to allow the insurer or self-insured employer to send the notice in the manner it chooses.

The Workers' Compensation Office of Adjudication (Office of Adjudication) commented that the regulation should specify that alternative delivery may be ordered by workers' compensation authorities. The Department agrees and has included specific reference to both the workers' compensation judges and Workers' Compensation Appeal Board (Board) in this regard. The Office of Adjudication further commented that the regulation should retain the previously deleted reference in subsection (b) to the "default" method of payment by "first-class mail to the claimant's last known address." The Department agrees and has made that change.

The Department deletes § 121.26 (relating to required information for maximum compensation rate increase) because it contains language that is duplicative of other language found in these regulations.

The Department amends § 121.27 (relating to violations of the provisions of the act or this chapter) to clarify the process involved with an order to show cause. Additionally, the Department amends § 121.27 to eliminate language regarding penalty petitions, which will be placed in § 121.27a (relating to Bureau intervention and penalties).

IRRC and Mr. Marshall commented that references to the "Department" in this section should be replaced with a reference to the "Bureau" for consistency. However, the Department believes that reference to the agency itself is necessary here given the nature of the order to show cause proceedings. IRRC also commented that specific reference be made to identify the "regulations" contemplated in this section. The Department made this change.

Mr. Marshall suggested that § 121.27 should simply incorporate 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) for order to show cause proceedings. Mr. Marshall questioned the need for the exceptions to 1 Pa. Code Part II that are contained in subsections (b) and (c) of § 121.27. IRRC and Mr. Marshall also commented that subsection (d) did not clearly indicate when the rules in 1 Pa. Code Part II were applicable. The Department has clarified this section to indicate that the rules contained in 1 Pa. Code Part II are applicable to the extent not specifically superseded in subsection (h) of

§ 121.27. The Department has replaced references to a “hearing officer” with “presiding officer” for consistency with 1 Pa. Code Part II. The Department believes however that departures from these rules to establish a specific time period for answers and to allow appointment of the presiding officer by the Director of Adjudication, who is more familiar with the handling and litigation of workers’ compensation matters, are needed to improve the certainty and efficiency of these proceedings.

The Department adds § 121.27a (relating to Bureau intervention and penalties) to address its involvement in penalty petitions. IRRC commented that the second “may” in subsection (a) should be “shall.” However, notice of penalties to the Bureau is currently mandatory and this process has made it infeasible for the Bureau to adequately review penalty cases. IRRC also commented that the Department should clarify in subsection (b) that the Bureau and other parties will be notified at the same time by the worker’s compensation judge. The Department agrees and has made that change.

Mr. Marshall commented that references to the “Bureau” in this section create confusion in light of the references to the “Department” in § 121.27 (relating to violations of the provisions of the act or this chapter). Mr. Marshall also commented on the differences between this section and the intervention provisions contained in 1 Pa. Code Part II. As noted above, the Department believes that reference to the agency itself is necessary in § 121.27 given the nature of the agency-initiated order to show cause proceedings. However, reference to the Bureau is more appropriate in § 121.27a in connection with possible intervention in the administrative proceedings involving claimant-initiated penalty petitions before workers’ compensation judges or the Board. Further, the Department believes that application of 1 Pa. Code Part II would not be appropriate in penalty proceedings conducted under this act.

The Department deletes § 121.28 (relating to petitions designated as a request for supersedeas) because supersedeas requests have been more appropriately addressed in Chapter 131.

The Department amends § 121.30 (relating to still payable list) to require record retention for 3 years, instead of indefinitely. The Department further amends § 121.30 to add language regarding the Bureau’s ability to make payments within its discretion to a claimant where the employer fails to make payments. The Department also amends § 121.30 to clarify existing language.

The Office of Adjudication commented that the Department should review subsection (a) of § 121.30 in light of the amendments to section 306(h) (77 P.S. § 583) found in Act 147 of 2006, which was signed into

law on November 9, 2006. The Department agrees and has amended subsection (a) to require an updated listing from insurers, with information similar to that previously required under the prior subsection (a), regarding pre-August 31, 1993 claims that may be eligible for section 306(h) payments under Act 147. Specifically, insurers must provide the Department with a list of information for claimants who are receiving less than \$100 per week under sections 306(a), 306(c)(23) or 307 of the act (77 P.S. §§ 511, 513(23)(c), 561, 562, 542) as of January 1, 2007. This list must contain the following particulars: (1) Bureau code; (2) Name of the claimant; (3) Social Security number; (4) Claimant's date of birth; (5) Date of injury; (6) Name of employer; (7) Insurer claim number; and, (8) Current weekly compensation rate. Insurers were notified of this revised list previously by mail and by a Notice posted in the *Pennsylvania Bulletin* at 36 Pa.B. 7927 (December 23, 2006).

IRRC commented that the regulation should state when the 3-year retention period begins. The Department agrees and has made it clear that records should be kept 3 years from the date of each payment. Also, IRRC commented that the phrase "reasonable times" is vague and should be changed to "normal business hours." The Department agrees and that change has been made.

The Department amends §§ 121.31--121.35 to clarify existing language.

Art Mann generally commented that he was curious about the problems the new regulations are designed to solve. Mr. Mann also questioned whether these changes will help manufacturers become more competitive in a global marketplace. The existing regulations have not been revised in many years, with a few exceptions. The final-form regulations will provide updated guidance to employees, employers and workers' compensation insurers in their transactions with the Bureau. Updating the regulations is imperative to accurately reflect the Bureau's administration of the act and to reflect technological enhancements common in the workers' compensation community. Additionally, the Bureau believes that these regulations will assist employees, employers, insurers and the Bureau in more efficiently meeting their obligations under the act.

Matthew Welch, Claims Specialist, commented that certain forms should be required to be signed and returned by employees. However, Mr. Welch's comment pertains to regulations found in 34 Pa. Code Chapter 123, which are not contained in this final rulemaking.

Affected Persons

The persons affected by this final-form regulation are employees, employers and workers' compensation insurers.

Fiscal Impact

There is no significant fiscal impact associated with this final-form regulation.

Reporting, Recordkeeping and Paperwork Requirements

The final-form regulations do not impose any significant additional reporting, record keeping or paperwork requirements on either the Commonwealth or the regulated community, but will result in increased convenience and time savings for insurers. The final-form regulations require the creation of only one new form, the Annual Claims Status Report, Form LIBC-774, as well as the modification of another form, the Final Statement of Account of Compensation Paid, Form LIBC-392A. However, the annual filing of a Statement of Account of Compensation Paid, Form LIBC-392, has been eliminated. These changes will reduce the number and frequency of forms required for filing by insurers, since the new Annual Claims Status Report, Form LIBC-774, is a more convenient, one-time annual form to address the status of all of the insurer's applicable claims, while the former Statement of Account of Compensation Paid, Form LIBC-392, was required on piece-meal basis throughout the year for each individual claim.

Effective Date

This final-form rulemaking is immediately effective upon its publication in the *Pennsylvania Bulletin*.

Sunset Date

A sunset date is not appropriate for these regulations. However, the Department will continue to monitor the impact and effectiveness of the regulations.

Contact Person

Persons who require additional information about this final-form regulation may submit inquiries to John T. Kupchinsky, Director, Bureau of Workers' Compensation, Department of Labor and Industry, 1171 South Cameron Street, Room 103, Harrisburg, PA 17104, (717) 783-5421, jkupchinsk@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 27, 2005, the Department submitted a copy of the proposed rulemaking, published at 35 Pa.B. 3807 (July 9, 2005), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee for review and comment. In addition to submitting the proposed rulemaking, the Department also provided the IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC and the Committees with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department considered all the comments from IRRC and the public. The House and Senate Committees did not provide comments.

Under section 5.1(j.1)-(j.3) of the Regulatory Review Act (71 P.S. § 745.5a(j.1)-(j.3)), these final-form regulations were approved/deemed approved by the House and Senate Committees on _____, 2007. IRRC met on _____, 2007 and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

Findings

The Department finds that:

- (a) Public notice of intention to amend the administrative regulations amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder in 1 Pa. Code §§ 7.1 and 7.2.
- (b) A public comment period was provided as required by law and all comments were considered.
- (c) The final-form regulations are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

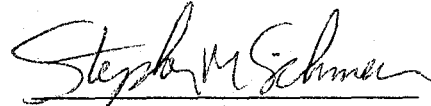
The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 34 Pa. Code, are amended by adding §§ 121.3a, 121.3b, 121.7a and 121.27a; and by amending §§ 121.1-121.18, 121.20-121.28 and 121.30-121.35, to read as set forth in Annex A.

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

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

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin* as a final-form regulation.



Stephen M. Schmerin,
Secretary

FISCAL NOTE: Fiscal Note 12-67 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. [General] Definitions.

[(a) *Purpose.* This chapter has been promulgated in response to the legislative mandate in the act and designed to further the lawful, efficient and speedy administration of the act. The term "employer" as used in this chapter means, when 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] 1--1041.4 and 2501--2506).

*Agreement--*For purposes of this chapter, an agreement is limited to any of the following:

(i) Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

(ii) Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337.

(iii) Agreement for Compensation for Death, Form LIBC-338.

(iv) Supplemental Agreement for Compensation for Death, Form LIBC-339.

*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] Article VII of the act (77 P.S. §§ 1035.1--1035.22)[,] on an equitable and impartial basis.

*Board--*The Workers' Compensation Appeal Board.

Bureau--The Bureau of Workers' Compensation of the Department.

Claimant--An individual who files a petition for, or otherwise receives, benefits under the act or the Disease Law.

Department--The Department of Labor and Industry of the Commonwealth.

Disease Law--The ~~Pennsylvania~~ Occupational Disease Act (77 P. S. §§ 1201--1603).

Earned premium--A direct premium earned as required to be reported to the Insurance Department on Special Schedule "W," under section 655 of The Insurance Company Law of 1921 (40 P. S. § 815). For the purposes of this chapter, direct premium earned may not include:

* * * * *

(ii) Premiums not attributable to coverage under the act or [The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201--1603)] the Disease Law.

* * * * *

Employer--As defined in sections ~~103 and~~ 401 of the act (77 P.S. §§ ~~21 and~~ 701), including the insurer and a self-insured employer.

* * * * *

FIRST REPORT OF INJURY--A FILING MADE WITH THE BUREAU UNDER THE REQUIREMENTS OF SECTION 438 OF THE ACT (77 P.S. § 994).

* * * * *

Insured employer--An employer which has chosen to insure its workers' compensation liabilities through a [workers] workers' compensation insurance carrier licensed to do so in this Commonwealth, INCLUDING THE STATE WORKERS' INSURANCE FUND. [The term "employer" when used in this context does not include the insurer thereof.]

* * * * *

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).

* * * * *

§ 121.2. [Superseded provisions] (Reserved).

[Each and every provision promulgated by this Bureau of Workers' Compensation, effective before the date of adoption of this chapter, is superseded as of the effective date of this chapter.]

§ 121.3. [Completion of forms] Filing of forms.

[In most instances, every filing in the claim and petition process shall be on a Departmental form identified with an OIDC designation. Each question or space on every form shall be completed to the best of the party's knowledge. If there is a reason why a question or space cannot be completed, then that reason shall be stated in the space; that is not applicable (n/a), zero, none, and the like. Forms not properly completed will be returned. Distribution of forms shall be in accordance with instructions on the forms.]

(a) Forms must be in the format prescribed by the Bureau. All references to forms shall mean paper forms or an electronic format prescribed by the Bureau.

(b) The Bureau may return forms that are not properly completed or filed. ~~The Bureau will notify a party if a form is returned.~~ IF A FORM IS RETURNED, THE BUREAU WILL NOTIFY THE SUBMITTING PARTY AS TO THE REASON THE FORM WAS RETURNED. For a form returned for the first time, the Bureau will preserve the filing date if the submitting party files a corrected version of the form within 14 days of the written notice of the return of the form.

~~(c) The Bureau may require the filing of forms or data through electronic means.~~

~~(d) The filing date is the date indicated on the United States Postal Service postmark or postal receipt. If the postmark or postal receipt is absent or unreadable, the filing date is the date of receipt by the Bureau. IN ALL OTHER INSTANCES, INCLUDING ELECTRONIC FILING OR HAND-DELIVERY, THE FILING DATE IS THE BUREAU'S DATE OF RECEIPT.~~

§ 121.3a. Computation of time.

Except as otherwise provided by law, in computing a period of time prescribed or allowed by this chapter, the day of the act, event or default after which the designated period of time begins to run may not be

included. The last day of the period so computed shall be included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

§ 121.3b. Posting PROVIDING workers' compensation information.

(a) An employer shall post workers' compensation information at its primary place of business and at its sites of employment in a prominent and easily accessible place, including, without limitation, areas used for the treatment of injured employees or for the administration of first aid. The workers' compensation information shall be posted in the same location as the notice required by section 305(e) of the act (77 P. S. § 501(e)). THE WORKERS' COMPENSATION INFORMATION SPECIFIED IN SUBSECTION (b) SHALL BE PROVIDED TO EVERY EMPLOYEE AT THE TIME OF HIRE AND IMMEDIATELY AFTER THE INJURY, OR AS SOON THEREAFTER AS POSSIBLE UNDER THE CIRCUMSTANCES OF THE INJURY. IF THE EMPLOYEE'S INJURIES ARE SO SEVERE THAT EMERGENCY CARE IS REQUIRED, THE INFORMATION SHALL BE GIVEN AS SOON AFTER THE OCCURRENCE OF THE INJURY AS IS PRACTICABLE.

(b) The information shall be entitled "Workers' Compensation Information" and include the following:

(1) The workers' compensation law provides wage loss and medical benefits to employees who cannot work, or who need medical care, because of a work-related injury.

(2) Benefits are required to be paid by your employer when self-insured, or through insurance provided by your employer. Your employer is required to post the name of the company responsible for paying workers' compensation benefits in the same area as this posting. AT ITS PRIMARY PLACE OF BUSINESS AND AT ITS SITES OF EMPLOYMENT IN A PROMINENT AND EASILY ACCESSIBLE PLACE, INCLUDING, WITHOUT LIMITATION, AREAS USED FOR THE TREATMENT OF INJURED EMPLOYEES OR FOR THE ADMINISTRATION OF FIRST AID.

(3) If your employer has posted a list of six or more health care providers in your work place, you are required to visit one of them for your initial treatment, except for an emergency. Your employer is required to give you a notice of your rights and responsibilities for using the list of providers.

(4) You should report immediately any injury or work-related illness to your employer.

~~(5)~~ (4) Your benefits could be delayed or denied if you do not notify your employer immediately.

~~(6)~~ (5) If your claim is denied BY YOUR EMPLOYER, you have the right to request a hearing before a workers' compensation judge.

~~(7)~~ (6) The Bureau of Workers' Compensation cannot provide legal advice. However, you may contact the Bureau of Workers' Compensation for additional general information at: Bureau of Workers' Compensation, 1171 S. Cameron St., Room 103, Harrisburg, Pennsylvania 17104-2501; telephone number within Pennsylvania (800) 482-2383; telephone number outside of Pennsylvania (717) 772-4447; TTY (800) 362-4228 (for hearing and speech impaired only); Website: www.state.pa.us, PA Keyword: workers comp.

(c) The information SPECIFIED IN SUBSECTION (b) must be printed on paper no smaller than 8 1/2 x 11 inches and in font no smaller than 11 point.

§ 121.4. [Reproduction of forms] (Reserved).

[Printing samples of all Departmental forms will be provided upon request. Reproduction of these forms will be in accordance with guidelines accompanying the samples.]

§ 121.5. Reporting injuries to the Bureau.

(a) [Employers' reports of occupational injury or disease shall be filed directly with the Bureau of Occupational Injury and Disease Compensation, Department of Labor and Industry (Department), Harrisburg, Pennsylvania 17120 on Form O IDC-344, Employer's Report of Occupational Injury or Disease or on Form LIBC-375, Employer's Report of Industrial Injury Coal Mining, in accordance with section 438 of the Workers' Compensation Act (77 P. S. § 994).

(b) It shall be mandatory that the employer report to the Department all occupational injury and disease resulting in disability continuing more than the day, shift or turn in which the employe was injured. It shall also be mandatory that the employe receive, as soon as practicable, a copy of this report to be completed at least through item 30.

(c) For purposes of reporting injuries, a variance is granted under section 438 of the act to allow submission of the reports as late as ten days but no sooner than seven days from the date disability begins.

(d) The [report shall be filed] employer shall file the Employer's Report of Occupational Injury or Disease, Form LIBC-344, A FIRST REPORT OF INJURY with the [Department] Bureau as follows:

* * * * *

(2) [Not before] Within 7 days [but no later than 10 days] after the date disability begins for all other injuries covered by section [435] 438 of the [Workers' Compensation Act] act (77 P. S. § [991] 994).

* * * * *

(b) The employer shall send a copy of this report THE FIRST REPORT OF INJURY to the employee simultaneously with filing it with the Bureau.

(c) A disability that requires a report FIRST REPORT OF INJURY to the Bureau is defined as an injury only resulting in death or disability continuing the entire day, shift or turn, or longer, in which the injury was received.

[(e) Disability for the purposes of reporting to the Bureau shall be defined as loss of time or wages beyond the day, shift or turn in which the injury was received or the loss of a member, loss of use of a member or disfigurement which may qualify for a specific loss payment under section 306(c) of the Workers' Compensation Act (77 P. S. § 513).

(f) Before mailing the Bureau copy, the employer shall separately complete the bottom of that form.]

§ 121.6. [Supplemental reports] (Reserved).

[The Preprinted Computer Card, Form OIDC-493, will be mailed by the Department of Labor and Industry (Department) to the insurer or self-insurer. This will acknowledge receipt by the Department of an employer's report which either indicates lost time beyond the waiting period or is unclear as to the period of disability. It is to be completed and returned to the Department in compliance with the instructions printed thereon.]

§ 121.7. Notice of compensation payable and notice of temporary compensation payable.

(a) [Employer's Notice of Compensation Payable, Form O IDC-495, may be used as indicated under section 407 of the Workers' Compensation Act (77 P. S. § 731).] If an employer files a Notice of Compensation Payable, Form LIBC-495, or a Notice of Temporary Compensation Payable, Form LIBC-501, the employer shall do all of the following simultaneously and no later than 21 days from the date the employer had notice or knowledge of the disability:

(1) Send the Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, to the employee or the employee's dependent.

(2) Pay compensation to the employee or to the employee's dependent.

(3) File the Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, with the Bureau.

(b) [The employer shall submit the notice directly to the employee or the employee's dependent, with a copy to the Department, as soon as practicable, and in no event later than 21 days from the date the employer knew of injuries.

(c) The notice does not require the employee's signature.

(d) If compensation payable under the notice is less than the maximum rate, a statement of wage form, Form O IDC-494, shall accompany the notice showing a calculation of wages, where applicable, and rate of compensation.] A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, EXCEPT A STATEMENT OF WAGES, FORM LIBC-494A, OR STATEMENT OF WAGES, FORM LIBC-494C, MAY NOT BE FILED WITH EITHER OF THE FOLLOWING:

(1) AN ESTIMATED NOTICE OF COMPENSATION PAYABLE, FORM LIBC-495, FILED UNDER SUBSECTION (c).

(2) A NOTICE OF COMPENSATION PAYABLE, FORM LIBC-495, FILED UNDER SUBSECTION (e).

(c) To modify a Notice of Temporary Compensation Payable, form LIBC-501, an employer shall file an amended Notice of Temporary Compensation Payable, form LIBC-501, with the Bureau during the 90-day temporary compensation payable period. The amended Notice of

~~Temporary Compensation Payable, form LIBC-501, shall be clearly identified as "Amended." This subsection shall not apply upon conversion of the Notice of Temporary Compensation Payable, form LIBC-501, to a Notice of Compensation Payable, form LIBC-495.~~

~~(d) The employer may file a Notice of Compensation Payable, Form LIBC-495, or a Notice of Temporary Compensation Payable, Form LIBC-501, based upon the employee's estimated wages if the employer has not obtained the wages necessary to properly calculate the employee's compensation payable. The estimated Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, shall be clearly identified as "Estimated."~~

~~(d e) If the estimated wages or compensation is NOT CORRECT, less than the employee's actual wages, the employer shall amend the estimated Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, upon receipt of the employee's actual wages -IN ONE OF THE FOLLOWING WAYS:~~

~~(1) Amendments resulting in an increase in the employee's wage or compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements; AND notices of compensation payable and notices of temporary compensation payable), AND SHALL BE CLEARLY IDENTIFIED AS "AMENDED" AND MAY HAVE ONLY THE INSURER'S SIGNATURE.~~

~~(2) The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17(b) (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.~~

~~(e f) In medical only cases, when an employee's injury has not resulted in lost time from work, an employer may file a Notice of Compensation Payable, Form LIBC-495.~~

§ 121.7A. NOTICE OF TEMPORARY COMPENSATION PAYABLE.

(a) IF AN EMPLOYER FILES A NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, THE EMPLOYER SHALL DO ALL OF THE FOLLOWING SIMULTANEOUSLY AND NO LATER THAN 21 DAYS FROM THE DATE THE EMPLOYER HAD NOTICE OR KNOWLEDGE OF THE DISABILITY:

(1) SEND THE NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, TO THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENT.

(2) PAY COMPENSATION TO THE EMPLOYEE OR TO THE EMPLOYEE'S DEPENDENT.

(3) FILE THE NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, WITH THE BUREAU.

(b) A STATEMENT OF WAGES, FORM LIBC-494A, OR STATEMENT OF WAGES, FORM LIBC-494C, SHALL BE FILED WITH EVERY NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, EXCEPT A STATEMENT OF WAGES, FORM LIBC-494A, OR STATEMENT OF WAGES, FORM LIBC-494C, MAY NOT BE FILED WITH A NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, FILED UNDER SUBSECTION (d).

(c) TO MODIFY A NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, AN EMPLOYER SHALL FILE AN AMENDED NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, WITH THE BUREAU DURING THE 90-DAY TEMPORARY COMPENSATION PAYABLE PERIOD. THE AMENDED NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, SHALL BE CLEARLY IDENTIFIED AS "AMENDED" AND MAY HAVE ONLY THE INSURER'S SIGNATURE.

(1) A STATEMENT OF WAGES, FORM LIBC-494A, OR STATEMENT OF WAGES, FORM LIBC-494C, SHALL BE FILED WITH EVERY AMENDED NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501.

(2) THIS SECTION DOES NOT APPLY UPON CONVERSION OF THE NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501, TO A NOTICE OF COMPENSATION PAYABLE, FORM LIBC-495.

(d) IN MEDICAL ONLY CASES, WHEN AN EMPLOYEE'S INJURY HAS NOT RESULTED IN LOST TIME FROM WORK, AN EMPLOYER MAY FILE A NOTICE OF TEMPORARY COMPENSATION PAYABLE, FORM LIBC-501.

§ 121.8. Agreements for compensation for disability or permanent injury.

(a) [All Agreements, Form LIBC-336, shall be completed before being signed. If any entry is made after the signature is affixed, the entire agreement may be nullified, at the option of the employe or his dependents.] An Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, shall be completed before being signed by the

employer and the employee. If the employer and the employee enter into an agreement, the employer shall do all of the following simultaneously and not later than 21 days from the date the employer had notice or knowledge of the disability:

(1) Send the FULLY-EXECUTED agreement signed by the employer and the employee to the employee.

(2) Pay compensation to the employee.

(3) File the agreement with the Bureau.

(b) [Wage information need not be shown unless the compensation payable thereon is less than the maximum allowed.] A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

(c) If the employer has not obtained the wages necessary to properly calculate the employee's compensation payable, an Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, based upon the employee's estimated wages may be filed. The estimated Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, shall be clearly identified as "Estimated."

(d) If the estimated wages or compensation is not correct, the employer shall amend the estimated Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, upon receipt of the employee's actual wages.

(1) Amendments resulting in an increase in the employee's wage or compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements; AND notices of compensation payable and notices of temporary compensation payable), and shall be clearly identified as "Amended."

(2) The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17 (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

§ 121.9. Agreements[--fatal cases] for compensation for death.

(a) If a compensable injury results in death, an Agreement [Form] for Compensation for Death, Form LIBC-338, shall be executed between [the] an employer and the [dependent,] deceased's dependents or [a] personal

representative[; and a copy thereof shall be submitted to the Department of Labor and Industry as outlined under section 407 of the Workers' Compensation Act (77 P. S. § 731)] and filed with the Bureau. AN AGREEMENT FOR COMPENSATION FOR DEATH, FORM LIBC-338, SHALL BE COMPLETED BEFORE BEING SIGNED BY AN EMPLOYER AND A DECEASED'S DEPENDENTS OR PERSONAL REPRESENTATIVE.

(b) [Wage information shall be shown if the compensation payable thereon for any period is less than the maximum allowed.] A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Agreement for Compensation for Death, Form LIBC-338.

(c) If death results [within 7 days from the date of] from the injury, compensation payments to the [dependent] dependents for the death benefit shall begin from the date of the employee's death.

(d) [If death results more than 7 days after the injury, compensation payments covering the disability period should be paid as set forth in this chapter, and compensation payments because of death due to the injury shall start from the date of death.] If the employer has not obtained the wages necessary to properly calculate the employee's compensation payable, an Agreement for Compensation for Death, Form LIBC-338, based on the employee's estimated wages may be filed. The estimated Agreement for Compensation for Death, Form LIBC-338, shall be clearly identified as "Estimated."

(e) If the estimated wages or compensation is not correct, the employer shall amend the estimated Agreement for Compensation for Death, Form LIBC-338, UPon receipt of the employee's actual wages.

(1) Amendments resulting in an increase in the employee's wage or dependent's compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements; AND notices of compensation payable and notices of temporary compensation payable), and shall be clearly identified as "Amended."

(2) The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17 (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

§ 121.10. [Supplemental agreements] (Reserved).

[(a) Supplemental Agreement, Form LIBC-337, shall be completed as necessary before being signed by both employer and claimant. This form shall be used to modify an agreement, notice of compensation payable or award.

(b) If the employe's disability is sufficient to entitle him to the maximum compensation payable under section 306(b) of the Workers' Compensation Act (77 P. S. § 512), no wage information need be given. The agreement shall then recite "employe has returned to work, but suffers a loss of earning power sufficient to entitle him to the maximum compensation payable for partial disability," or words to that effect as the fact of each case warrant.

(c) If the employe has returned to work but is receiving less than the maximum compensation payable under section 306(b) of the act for partial disability, his wages before the injury, as fixed by the agreement or award, and the wages actually received after his return to work, shall be set forth. Payment of partial disability under this paragraph shall be made on the same periodic basis as other compensation is payable, except, and only where necessary, an initial period not to exceed 4 weeks, may be used to determine an average weekly wage for partial disability.]

§ 121.11. Supplemental agreements[--fatal] for compensation for death.

[Where the birth of a posthumous child, the remarriage of a widow or the death of a dependent changes the amount of compensation of the person or person to whom it is payable, but does not extinguish the employer's liability under an award or an agreement, a Supplemental Agreement, Form LIBC-339, should be executed by the surviving parent or guardian. The Department of Labor and Industry will presume that the surviving parent is guardian for purposes of receiving compensation under the act.]

(a) A Supplemental Agreement for Compensation for Death, Form LIBC-339, may be used to change an Agreement for Compensation for Death, Form LIBC-338, or an award. A Supplemental Agreement for Compensation for Death, Form LIBC-339, shall be completed before being signed by an employer and a deceased's dependents or personal representative.

(b) An Agreement for Compensation for Death, Form LIBC-338, may SHALL be changed for any of the following reasons:

(1) Birth of a posthumous child.

(2) A change in dependent's status, including death.

(3) A surviving spouse dies, remarries or becomes capable of self-support and any dependent children remain eligible for benefits.

(c) The Bureau will presume that the surviving parent is guardian for purposes of receiving compensation under the act.

(d) The completed Supplemental Agreement for Compensation for Death, Form LIBC-339, shall be sent to the all of the deceased's dependents or their personal representative and filed with the Bureau.

§ 121.12. [Department] Bureau review of agreements; [and] notices of compensation payable and notices of temporary compensation payable.

[If any facts in a compensation agreement, or in a notice of compensation payable, differ from facts stated in the injury report, and the Department of Labor and Industry (Department) cannot reasonably resolve the difference, the agreement or notice may be returned for correction. Errors in computing wages may be corrected without the execution of new agreements if the correction would result in an increase in the employe's wage or his compensation. This shall be accomplished by the submission of notice to the employe with a copy to the Department.]

(a) Errors in computing wages may SHALL be corrected by filing an amended version of the agreement, OR Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, with the Bureau if correction of errors would increase the employee's wage or compensation.

(1) The amended agreement, OR Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, shall be clearly identified as "Amended" and may have only the insurer's signature.

(b) (2) A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every amended agreement, OR Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501.

(B) THE EMPLOYER SHALL FILE A SUPPLEMENTAL AGREEMENT FOR COMPENSATION FOR DISABILITY OR PERMANENT INJURY, FORM LIBC-337, UNDER § 121.17 (RELATING TO CHANGE IN COMPENSATION) WHEN THERE ARE CHANGES RESULTING IN A DECREASE IN THE EMPLOYEE'S WAGE OR COMPENSATION.

§ 121.13. Denial of compensation.

If compensation is controverted, a Notice of [Workmen's] Workers' Compensation Denial, Form LIBC-496, shall be sent to [employee] the employee or dependent and filed with the Bureau, fully stating the grounds upon which the right to compensation is controverted, [with a copy to the Department of Labor and Industry, no later than] within 21 days after notice or knowledge to the employer of [employee's] the employee's disability or death.

§ 121.14. Weekly wage[,] for occupational disease cases.

[The] For cases involving occupational diseases under the act, the weekly wage will be determined in accordance with section 309 of the [Workers' Compensation Act] act (77 P. S. § 582), and [will] a claimant's compensation rate shall be subject to the maximum compensation payable rate in effect at the date of last exposure.

§ 121.15. Compensation payable.

(a) In computing the time when the disability becomes compensable, the day the injured [employee] employee is unable to continue at work by reason of the injury shall be counted as the first day of disability in the 7 day waiting period. If the injured [employee] employee is paid full wages for the day, shift or turn on which the injury occurred, the following day shall be counted as the first day of disability. In determining the waiting period or time during which compensation is payable, each calendar day, including Sundays and holidays, shall be counted. In determining the period of disability, seven should be used as a divisor to determine the number [of weeks], and any part [thereof], of the weeks.

(b) If death results [within 7 days from the date of] from the injury, compensation payments to ~~all of the~~ [dependent] dependents for death benefits shall begin from the date of the employee's death.

(c) If death results more than 7 days after the injury, compensation payments covering the disability period should be paid as set forth in this chapter[;], and compensation payments because of death due to the injury shall start from the date of death.

* * * * *

§ 121.16. [Statement of compensation paid] Updating claims status.

(a) [As close as practicable to the anniversary date of injury or death, a Statement of Account of Compensation, Form LIBC-392, shall be filed annually with the Department of Labor and Industry (Department) on each

open case, showing payments to date of filing.] All of the following apply to the Annual Claims Status Report, Form LIBC-774:

(1) The Bureau will provide the Annual Claims Status Report, Form LIBC-774, to an insurer each year before February 1: MARCH 1.

(2) The insurer shall file a completed Annual Claims Status Report, Form LIBC-774, INCLUDING ANY ATTACHMENT REQUIRED TO SUPPORT THE DATA REPORTED, to the Bureau each year before April 16: JUNE 1.

(3) If an insurance carrier fails to file the completed report, the Bureau may recommend that the Insurance Commissioner revoke or suspend the insurance carrier's license under section 441(a) of the act (77 P. S. § 997).

(4) If a self-insured employer fails to timely file the completed report, the Secretary of the Department may revoke or suspend the self-insured employer's privilege to carry its own risk under section 441(b) of the act.

(5) THE ANNUAL CLAIMS STATUS REPORT SHALL CONTAIN A LIST OF ALL OPEN CLAIMS WHICH WERE INITIATED BY THE FILING OF A BUREAU DOCUMENT OTHER THAN A FIRST REPORT OF INJURY, MORE THAN 3 CALENDAR YEARS BEFORE THE CALENDAR YEAR IN WHICH THE REPORT IS FILED AND ON WHICH NO ACTIVITY WAS REPORTED TO THE BUREAU DURING THE CALENDAR YEAR IMMEDIATELY BEFORE THE REPORT YEAR.

(6) ONLY OPEN CLAIMS WHICH WERE INITIATED WITH THE BUREAU DURING CALENDAR YEAR 2004 AND THEREAFTER MAY BE LISTED IN THE ANNUAL CLAIMS STATUS REPORT.

(b) [If an agreement or notice of compensation payable provides solely for payment of compensation for a specific loss under section 306(c) of the Workers' Compensation Act (77 P. S. § 513), a Statement of Account of Compensation, Form LIBC-392, will be accepted by the Department as confirmation of final payment.

(c) If liability of an employer for death compensation has terminated because of remarriage of a widow or death of all dependents entitled to compensation, a Statement of Account of Compensation, Form LIBC-392, shall be submitted to the Department along with a certified copy of marriage certificate or death certificate, as the case may be.

(d) If the period for which death compensation payable by the employer has expired, Statement of Account of Compensation, Form LIBC-392, shall be filed with the Department as final payment confirmation.

(e) If compensation is terminated or suspended by decision of a referee, Workmen's Compensation Appeal Board or an appeal court or by original or supplemental agreement signed by the injured employee, a Statement of Account of Compensation, Form LIBC-392, shall be filed with the Department as confirmation of payment.

(f) If a statement of account of compensation is submitted under the requirements of the provisions of this chapter, it shall be signed by an authorized representative of the employer or insurer.] A Final Statement of Account of Compensation Paid, Form LIBC-392A, shall be filed with the Bureau immediately after the final payment of compensation.

§ 121.17. [Termination] Change in compensation.

(a) [*By final receipt.* If an injured employe has recovered from his injury so that he has regained his full earning power, and so that all disability due to the injury has terminated, a final receipt may be fully prepared for signature. The fact that the employe returns to similar work at his original or greater wage unaccompanied by a showing that all disability has terminated is not a basis for a final receipt. However, it may be the basis for a suspension of compensation.] If an injured employee has recovered from an injury, or a deceased employee's dependent or personal representative is no longer eligible to receive death benefits, an Agreement to Stop Weekly Workers' Compensation Payments (Final Receipt), Form LIBC-340, may be filed with the Bureau. EXECUTED BY THE PARTIES. THE EXECUTED AGREEMENT SHALL BE FILED WITH THE BUREAU.

(b) [*By agreement.* Termination may be accomplished by agreement to that effect signed by the employer and claimant. A suspension of compensation, rather than a complete termination, may also be accomplished by agreement between the parties.] Termination, suspension, modification or other change in compensation may be accomplished by filing with the Bureau a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337. A Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, may be used to change an Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, AN AGREEMENT FOR COMPENSATION FOR DEATH, FORM LIBC-338, a Notice of Compensation Payable, Form LIBC-495, or an award. A Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, shall be completed before being signed by the employer and the employee. The completed Supplemental Agreement for Compensation for Disability or

Permanent Injury, Form LIBC-337, shall be sent to the employee or his dependents and filed with the Bureau.

(c) [By petition. If termination, or suspension, cannot be accomplished as indicated in subsection (a) or (b), the employer shall file petition for termination, or suspension, as provided under section 413 of the Workers' Compensation Act (77 P. S. § 774.2).] A suspension or modification of compensation may be accomplished by the employer mailing a Notification of Suspension or Modification Pursuant to §§ 413 (c) & (d), Form LIBC-751, to the Bureau and the employee. The wage calculation on the Notification of Suspension or Modification Pursuant to §§ 413 (c) & (d), Form LIBC-751, shall be completed for a modification.

(d) [By decision. If a decision of a Referee, Board or Appeal Court terminates the payment of compensation, no further documentation is required, except Statement of Account of Compensation, Form OIDC-392, showing total compensation paid.] If temporary payments made under § 121.7A (a) (relating to ~~notice of compensation payable and notice of temporary compensation payable~~) are stopped, the employer shall file ONE OF THE FOLLOWING:

(1) aA Notice Stopping Temporary Compensation, Form LIBC-502, and a Notice of Workers' Compensation Denial, Form LIBC-496, within 5 days of the last payment; AND WITHIN THE 90-DAY TEMPORARY COMPENSATION PAYABLE PERIOD; ~~or file~~

(2) aA Notice of Compensation Payable, Form LIBC-495; ~~or file~~

(3) aAn Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

(E) The employer may not use FILE a Notification of Suspension or Modification Pursuant to §§ 413 (c) & (d), Form LIBC-751, to stop temporary payments made under § 121.7A.

~~(e)~~ (F) If termination, suspension or modification of compensation cannot be achieved through subsection (a), (b), (c) or (d), the employer may file a pPetition †To: Terminate (stop payment of worker's compensation), Terminate (based upon physician's affidavit, a special supersedeas hearing to be scheduled), Modify or Suspend Compensation Benefits, Form LIBC-378.

§ 121.18. Subrogation [procedure].

(a) [In the event of] If aN EMPLOYEE OBTAINS A THIRD-PARTY RECOVERY ~~third party obtains recovery~~ under section 319 of the

[Workers' Compensation Act] act (77 P. S. § 671), a Third Party Settlement Agreement, Form [OIDC-380] LIBC-380, shall be executed by the parties [thereon].

(b) If credit is requested against future compensation payable, a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, shall MAY also be filed with the [Department of Labor and Industry indicating] Bureau, including the amount and periodic method of pro rata reimbursement of attorney fees and expenses.

§ 121.20. Commutation of compensation under section 412 of the act (77 P. S. § 791).

Commutation under section 412 of the [Workers' Compensation Act] act (77 P. S. § 791) shall only be allowed for the final [25] 52-week period or less. [It is not intended to permit the payment of compensation by 25-week] The commutation amount shall not be paid in installments. [The full amount of compensation commuted shall be sent to the employe with Form LIBC-498 and a copy of this form shall be sent to the Department. If a statement of account showing the full amount of compensation paid, including the amount commuted, accompanies the Department copy of Form LIBC-498, it will serve to close the case. Commutation of payments under section 316 of the Workers' Compensation Act (77 P. S. § 604) is dealt with under the rules for hearing before referees.] A Commutation of Compensation, Form LIBC-498, shall be filed with the Bureau.

§ 121.21. [Coal diseases--claim and reimbursement] Reimbursement for silicosis, anthraco-silicosis or coal workers' pneumoconiosis.

(a) Claims for compensation for silicosis, anthraco-silicosis or coal workers' pneumoconiosis as defined in section 108(q) of the [Workers' Compensation Act] act (77 P. S. § 27.1(q)), for disability or death, [where] when the date of disability commences or death occurs between July 1, 1973, and June 30, 1976, inclusive, [where] and when the liable employer is seeking to offset part of its liability under section 305.1 of the [Workers' Compensation Act] act (77 P. S. § 411.1), shall be instituted by [claim petition filed with the Department of Labor and Industry (Department) on Form OIDC-362] filing a Claim Petition for Workers' Compensation, Form LIBC-362, with the Bureau.

(b) Unless stayed by a supersedeas on appeal, following the issuance of an award by the [referee] workers' compensation judge, the [appeal board] Board or the appellate court, compensation payments for silicosis, anthraco-silicosis or coal workers' pneumoconiosis[, as set forth in section 108(q) of the Workers' Compensation Act] shall be made in full by the insurer [with the following provisions for reimbursement by the

Commonwealth in accordance with section 305.1 of the Workers' Compensation Act:]. If the insurer seeks reimbursement from the Bureau under section 305.1 of the act, it shall submit the following to the Bureau:

(1) A notarized statement, signed by an officer of the company, containing an itemized list of payments made to all claimants[, shall be submitted to the Department] for quarterly reimbursement. Each itemized entry shall contain [Social Security number, claimant's name and address, and total amount paid claimant] the claimant's name, address, Social Security number and the total amount paid to the claimant. Each itemized list shall be made for a full and exact calendar quarter[.]; that is, January 1 through March 31[.]; April 1 through June 30[.]; July 1 through September 30[.]; or October 1 through December 31. Each list shall [be submitted in] have two categories: recurring quarterly reimbursement and initial payment made to each claimant, which payment should include the current reimbursable quarter. Each list submitted shall be in roster form and in numerical order according to the claimant's Social Security number, [shall] contain the claimant's name and Social Security number, [shall] cover the amount to be reimbursed and the total amount paid to the claimant, and [shall] be [submitted on the quarterly reimbursement statement Bureau Form O IDC-683] reported in a format as required by the Bureau REPORTED TO THE BUREAU.

(2) Each bill containing the itemized entries shall be submitted [in duplicate] to the Bureau [of Occupational Injury and Disease Compensation] no later than the 15th day of the month following the end of the calendar quarter for which reimbursement is sought. A bill received after that date will not be considered for payment until the end of the following quarter.

(c) [For the purpose of auditing, every insurer shall be required to keep concise records concerning payments and reimbursements, to be made available for inspection by the Department or a governmental agency at reasonable times.] For auditing purposes, an insurer shall keep records for 3 years concerning FROM THE DATE OF EACH payments and reimbursements made under this section. The records shall be made available for inspection by the Bureau at reasonable times DURING NORMAL BUSINESS HOURS.

(d) If the Bureau [of Workers' Compensation (Bureau) has reason to believe] has information BELIEVES that the insurer [or self-insurer] primarily liable for compensation under the act has failed to make a payment under the act and [the] this section, the Bureau may[, in its discretion, make payments of] pay compensation directly to the claimant, for the portion of the compensation which is payable by the Commonwealth under section 305.1 of the [Workers' Compensation Act]

act until [a time] the insurer [or self-insurer] resumes payment of compensation. [Nothing in this section shall require the] The Bureau is not required to initiate direct payments to a claimant [where] when the insurer [or self-insurer] is making full payment of the compensation but is not seeking reimbursement [pursuant to] under this section. [Nothing in this section shall eliminate the responsibility of the insurer or self-insured to comply with the provisions of the act and the provisions of this part or prohibit prosecution for any alleged violations of the act or this part or in accordance with the act.]

§ 121.22. Subsequent injury fund.

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

* * * * *

(2) Upon expiration of the specific loss period, the [Department] Bureau will be responsible for additional compensation due for the duration of total disability. 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:

* * * * *

(b) Insurance carriers shall remit to the [Department] Bureau assessment amounts as follows:

* * * * *

(c) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the [Department] Bureau will calculate the assessment amount as though an earned premium amount of zero were reported to the Insurance Department.

* * * * *

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

(f) The claimant shall file a [petition for additional compensation] Claim Petition for Additional Compensation from the Subsequent Injury Fund Pursuant to Section 306.1 of the Workers' Compensation Act, Form LIBC-375, as provided in section 315 of the act (77 P. S. § 602) or the claim will be forever barred.

§ 121.23. Supersedeas fund.

(a) Annual assessments under section 443 of the act (77 P. S. § 999) shall be in amounts determined by the following:

* * * * *

(3) Insurance carriers shall remit to the [Department] Bureau assessment amounts as follows:

* * * * *

(b) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the [Department] Bureau will calculate the assessment amount as though an earned premium amount of zero were reported to the Insurance Department.

* * * * *

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

(e) Applications for reimbursement shall be filed directly with the Bureau on [Form LIBC-662, "] an Application for Supersedeas Fund Reimbursement[.], Form LIBC-662. Applications will be processed administratively to determine whether the parties can agree on the payment or amount of reimbursement. If the payment or amount of reimbursement cannot be agreed upon, the matter will be assigned to a [Workers' Compensation Judge] workers' compensation judge for a formal hearing and adjudication.

§ 121.24. [Approval of fees] (Reserved).

[In all cases involving claim petitions or other petitions under The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201--1603) and the Workers' Compensation Act (77 P. S. §§ 1--1041.4), no agreement or claim for attorney's fees or other disbursements in support of any claim for compensation shall be valid and no payments shall be made pursuant thereto unless the agreement or claim has been approved by the referee or by the Appeal Board, as the case may be, by whom the matter is heard. In all such cases, the referee or the board member hearing the case shall obtain from the claimant's attorney a copy of the fee agreement or claim and a copy of any other statement or claim for disbursements to be made on account of the presentation of the case, and, after determining the

proper amount to be allowed in relation to the services rendered, shall specify in the decision the amount approved for disbursement.]

§ 121.25. [Delivery of compensation checks] Issuance of compensation payments.

[(a) In no event may a claimant's check for workmens' compensation or occupational disease compensation be made payable to, or delivered to, an attorney except when the attorney is the administrator or executor of the claimant's estate, a court-appointed trustee, a court-appointed guardian or acting in some other fiduciary capacity. In such cases compensation may be paid to the attorney in his capacity as administrator or executor of the estate, court appointed trustee, court appointed guardian or other fiduciary capacity. Notice of the first payment to a claimant shall be sent to counsel of record. In cases where an attorney's fee and costs have been approved by a referee or the Workmen's Compensation Appeal Board, or where the referee or board determines and awards the attorneys' fee and costs, a check in the amount of the fees and costs, separate from a compensation payment, shall be made payable to the claimant's attorney and mailed to him. The provisions of rules and regulations inconsistent with this section are repealed.

(b) The claimant's compensation checks shall be mailed by first-class mail to the claimant's last known address, unless the claimant has authorized another method of delivery on a form to be prescribed by the Bureau. In no event shall a claimant or his representative be required to appear at a specific place designated by the employer or insurer in order to receive his compensation payments.] Compensation payments shall be issued according to the following:

(1) Unless the claimant and the employer have executed an Authorization for Alternative Delivery of Compensation Payments, Form LIBC-10, or a court orders UNLESS payment IS OTHERWISE ORDERED BY A WORKERS' COMPENSATION JUDGE, THE BOARD OR ANY COURT, a claimant's payment for workers' compensation or occupational disease compensation SHALL BE MAILED BY FIRST-CLASS MAIL TO THE CLAIMANT'S LAST KNOWN ADDRESS, AND may not be made payable to, or delivered to, an attorney unless the attorney is the administrator or executor of the claimant's estate, a court-appointed trustee, a court-appointed guardian or acting in some other fiduciary capacity.

(2) Notice of the first payment to a claimant shall be sent to counsel of record BY THE INSURER OR SELF-INSURED EMPLOYER.

(3) If a workers' compensation judge or the Board approves attorneys' fees and costs, a payment for fees and costs, separate from a compensation payment, shall be made payable, and issued, to the claimant's attorney.

(4) An employer may not require a claimant to appear at a specific place in order to receive compensation payments.

§ 121.26. [Required information for maximum compensation rate increase] (Reserved).

[(a) *General*. The provisions of this section set forth the information required on initial agreements and notices of compensation payable regarding the increase in compensation rates set forth in section 105.2 of the Workers' Compensation Act (77 P. S. § 25.2). The information shall be submitted on notices of compensation payable and initial agreements for all injuries occurring on or after February 3, 1975, since it is expected that some of these cases will be in active payment status on July 1, 1975.

(b) *Purpose*. The purpose of this section is to provide confirmation information to the Department of Labor and Industry as to what rate changes, if any, will occur on July 1, 1975, for injuries occurring on and after February 3, 1975.

(c) *Information required*. Required information shall be as follows:

(1) Statement of Wages (LIBC-494) shall be completed on cases where average weekly wage is less than \$256.50 and attached to Notice of Compensation Payable (LIBC-495). Agreement (LIBC-336) shall also show complete wage information.

(2) If average weekly wage is \$256.50 or more, wage information may be omitted.

(3) On agreements or notices of compensation payable for injuries occurring between February 3, 1975, and July 1, 1975, a phrase shall be inserted under "Remarks" or "Further matters agreed upon":

"Compensation payable on or after July 1, 1975, shall be at the rate of \$ _____."

On all injuries occurring on and after July 1, 1975, procedure shall be as outlined under 34 Pa. Code § 121.7(c) (relating to notice of compensation payable) and 34 Pa. Code § 121.8(b) (relating to agreement).]

§ 121.27. [Violations of the provisions of the act or this chapter] Orders to show cause.

(a) [The provision of 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) applies to proceedings involving violations of the act or this chapter.] The Department may serve an order to show cause on a respondent for an alleged violation of the act or regulations CONTAINED IN 34 PA. CODE, PART VIII (RELATING TO BUREAU OF WORKERS' COMPENSATION). The order to show cause will contain the particulars of the alleged violation and the procedures for filing an answer under subsection (b).

(b) [Whenever the Department of Labor and Industry (Department) has information, through its own investigation or through complaint by a party to the Department in writing on a form prescribed by the Department, upon which it believes that a violation of the provisions of the act or this chapter has occurred, the Department may serve upon the respondent who has allegedly violated the provisions of the act or this chapter an order to show cause why the respondent should not be found in violation of the provisions of the act or this chapter. The order will set forth the particulars of the alleged violation. A copy of the order will be sent to the employer, his insurer, and the employe or family of the employe involved in the alleged violation. The Legal Division of the Bureau of Workers' Compensation shall be deemed to be a party to be served with notice of any petition for penalties filed with the Department on the form prescribed by the Department and any other items pertinent to any proceedings on a petition. This subsection supplements 1 Pa. Code § 35.14 (relating to orders to show cause).] A written answer to the order to show cause may be filed no later than 20 days after the date that the order to show cause is served on the respondent. The answer shall admit or deny the allegations in the order to show cause and state respondent's defense. General denials that are unsupported by specific facts will not comply with this section and may be deemed a basis for entry of a final order because the respondent has raised no issues requiring further proceedings. The facts in the order to show cause may be deemed admitted if a respondent fails to file a timely answer under this subsection.

(c) [The order to show cause will set forth a date, time and place for a hearing for the purpose of determining whether the violation as alleged has occurred. This subsection supplements 1 Pa. Code § 35.14 (relating to orders to show cause).] The Director of the Bureau ADJUDICATION will assign the order to show cause to an impartial hearing. A PRESIDING officer who will schedule a hearing. The hearing PRESIDING officer will provide notice to the parties of the hearing date, time and place.

(d) [The order to show cause will also specify the date, place and person to be served with an answer to the order to show cause. An answer to the order to show cause shall be filed no later than 15 days following the date that the order to show cause is served on the parties as provided for in

section 416 of the Workers' Compensation Act (77 P. S. § 821). This subsection supplements 1 Pa. Code §§ 35.14 and 35.37 (relating to orders to show cause; and answers to orders to show cause.)] The hearing will be conducted under this section and, when applicable, 1 Pa. Code Part II TO THE EXTENT NOT SPECIFICALLY SUPERSEDED IN SUBSECTION (h). The hearing PRESIDING officer will not be bound by strict rules of evidence.

(e) [Failure of the respondent to answer and appear at the scheduled hearing will be considered an admission of the allegations contained in the order to show cause and will form the basis for a decision that a violation of the act or this chapter has occurred.] Hearings shall be stenographically recorded and the transcript of the proceedings shall be part of the record and kept by the Department.

(f) [The respondent shall have the burden of coming forth with evidence showing compliance with the provisions of the act or this chapter; but the Department or the party complaining of such violation of the act or this chapter, or the Department and the complaining party, shall have the burden of proving that such violation has occurred.] If the respondent fails to appear in person or by counsel at the scheduled hearing without adequate excuse, the hearing PRESIDING officer shall decide the matter on the basis of the order to show cause and evidence presented.

(g) [In instances where the Department has not instituted proceedings as set forth in this section but where it becomes apparent during the conduct of any hearing before a referee that a violation of the provisions of the act or this chapter may have occurred, the Department shall forthwith be notified in writing of this possibility by the referee hearing the matter and by the claimant or his representative. The Department shall be given the opportunity to participate in any proceedings where a possible violation of the act or this chapter exists and where penalties under section 435(d)(i) of the Workers' Compensation Act (77 P. S. § 991(d)(i)) are or may be sought. The Department will indicate in writing within 15 days after receipt of the written notice of these possible violations whether it will participate in the penalty proceedings or not.] The Department has the burden to demonstrate, upon a preponderance of the evidence, that the respondent failed to comply with the act or regulations CONTAINED IN 34 PA. CODE, PART VIII (RELATING TO BUREAU OF WORKERS' COMPENSATION).

[(h) In the event the Department does indicate that it will participate in the penalty proceedings, the Department will receive notice of any further hearings on the matter giving rise to the penalty proceeding and shall be treated as a party to those proceedings for the purposes of notice, decision and any further appeals.

(i) In the event the Department indicates that it will not participate in the penalty proceedings, the Department will receive a copy of the decision of the referee as to the disposition of the penalty request and proceedings. It shall be the duty of the party to the proceedings to advise the Department as to any further appeals on the issue of penalties and the outcome of the appeals, including appeals to and decisions by the Workmen's Compensation Appeal Board and any court of competent jurisdiction.

(j) Notwithstanding other provisions of this section, the Department may assign a petition for penalties presented to the Department by a party to a referee for hearing and determination without the participation of the Department. If the Department will so assign a matter to a referee, the petition will contain an indication that the Legal Division of the Bureau of Workers' Compensation has reviewed the petition and has decided not to participate in the proceedings. Nothing contained in this subsection shall be construed to eliminate the requirements that the Legal Division of the Bureau of Workers' Compensation shall receive notice of other items pertinent to any proceeding on such a petition; reference should be made to subsections (b) and (i) particularly.

(k) In deciding whether to issue an order to show cause under subsection (b) of this section or to participate in proceedings assigned under subsection (j), the Legal Division of the Bureau of Workers' Compensation and the Department will consider at least the following:

- (1) The nature of the offense alleged.
- (2) The relative seriousness of the offense or violation alleged.
- (3) The amount of compensation or penalty, or both, involved.
- (4) The temporal duration of the alleged violation.
- (5) The impact of the alleged violation, financially or otherwise, on the complainant.
- (6) The repetitive pattern, if any, apparent in the alleged violation--that is, has the respondent committed this same violation or others in regard to the same case previously.
- (7) The repetitive pattern, if any, in general in regard to this respondent and other violations, alleged or proven.
- (8) The extent and nature of the alleged violation in relation to other violations, alleged or proven, of other respondents.

(9) The explanation, excuse, good faith and the like, if any, offered by the respondent and verified through investigation or otherwise.

(10) The workload and staff available to prosecute or participate in these proceedings.

(11) The priorities established, if any, given the workload and staff.

(12) The chance of successful prosecution or participation, including the veracity and availability of witnesses or evidence, or both, necessary to prosecute the matter.

(13) Other factors relevant to this decision not specifically itemized but which may become apparent in the investigation of a particular case.

(l) The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

(1) *Act*--The Workers' Compensation Act (77 P. S. §§ 1--1041.4).

(2) *Department*--The Department of Labor and Industry, the Bureau of Workers' Compensation.

(3) *Notice to the Department*--Mailing by first class mail to the Legal Division of the Bureau of Workers' Compensation at their offices in Harrisburg.

(4) *Referee*--Workmen's Compensation referee as defined in section 401 of the act (77 P. S. § 701) or other hearing officer as appointed by the Secretary of the Department of Labor and Industry.

(5) *Respondent*--An insurer or self insurer, including the State Workmen's Insurance Fund, which may have violated the provisions of the act or this chapter.]

(h) This section supersedes 1 Pa. Code §§ 35.14, 35.37, 35.131, 35.201 AND 35.221 and ~~35.201--35.214.~~

§ 121.27a. Bureau intervention and penalties.

(a) If the workers' compensation judge determines that penalties resulting from an alleged violation of the act or regulations CONTAINED IN 34 PA. CODE, PART VIII (RELATING TO BUREAU OF WORKERS' COMPENSATION) may be imposed on a party under section 435 of the act (77 P. S. § 991), the workers' compensation judge

may notify the Bureau in writing within 20 days of the notice of the alleged violation.

(b) The workers' compensation judge will include a description of the nature of the alleged violation in the notice and will provide the Bureau with an opportunity to participate in the proceeding as an intervening party. The workers' compensation judge SIMULTANEOUSLY will provide a copy of the notification to all parties.

(c) Within 20 days after receipt of the notice, the Bureau will notify the workers' compensation judge and the parties of its decision to participate in the proceeding or to allow the proceeding to continue without intervention. If the Bureau fails to respond to the notification within 20 days, the Bureau shall not have intervened. By not intervening before the workers' compensation judge, the Bureau has not waived its right to intervene in a different forum or following additional notice from the workers' compensation judge in the same proceeding.

(d) Nothing in this section shall be construed to require the Bureau to intervene in any matter or to restrain a workers' compensation judge from notifying the Bureau of a further alleged violation of the act or regulations in a case.

(e) This section supplements 34 Pa. Code §§ 131.121 and 131.122 (relating to penalty proceedings initiated by a party; and other penalty proceedings).

§ 121.28. [Petitions designated as a request for supersedeas] (Reserved).

[In any case in which a petition to terminate, modify, review or set aside notices of compensation payable, an agreement, supplemental agreement or an award under section 413(a) of the Workers' Compensation Act (77 P. S. § 774.2(a)) is designated as a request for/ supersedeas, supersedeas may be granted at the discretion of the referee only after a hearing has been scheduled and held under the provisions of act. Upon receipt of a petition designated as a request for supersedeas under section 413(a) of the Workers' Compensation Act, the Department shall immediately assign the petition to a referee who shall forthwith schedule a hearing to consider the request for the supersedeas and the merits of the petition. The referee hearing the case shall, within 2 days of the hearing, render a decision on the issue of supersedeas and shall dispose of the rest of the issues as soon as practicable by a written decision. This rule does not apply to petitions which operate as an automatic supersedeas under section 413(a) of the Workers' Compensation Act nor is it intended to controvert any other provisions of the act.]

§ 121.30. [Still payable list] Section 306(h) payments (77 P. S. § 583).

(a) Under section 306(h) of the [Workers' Compensation Act] act (77 P. S. § 583), [insurance carriers and self-insured employers, including the State Workmen's Insurance Fund,] insurers shall ~~{submit}~~ ~~have submitted~~ a listing of all ~~pre-March 17, 1968,~~ PRE-AUGUST 31, 1993 cases on which compensation is ~~{still}~~ payable UNDER SECTIONS 306(A), 306(C)(23) or 307 OF THE ACT (77 P.S. §§ 511, 513(c)(23), 561, 562, 542), IN AN AMOUNT LESS THAN \$100 PER WEEK on ~~July 1, 1975~~ JANUARY 1, 2007. This listing ~~must have been received in the Bureau no later than July 1, 1975.~~ and should SHALL contain the following particulars:

- (1) BUREAU CODE.
- ~~(1)~~ (2) Name of claimant.
- ~~(2)~~ (3) Social Security number.
- ~~(3) Bureau file number.~~
- (4) Claimant's date of birth.
- (5) Date of ~~accident~~ INJURY.
- (6) Name of employer.
- (7) Insurer CLAIM number.
- (8) Current WEEKLY compensation rate.
- ~~(9) Adjusted compensation rate.~~
- ~~(10) Reimbursable difference.~~
- ~~(11) Period of payment schedule.]~~

(b) [The quarterly reimbursement certification procedure shall be as follows: A notarized statement, signed by an officer of the company, containing an itemized list of payments made to all claimants, shall be submitted to the Department no later than the tenth day of the month following the quarter for which advance reimbursement payments have been made. Each itemized entry shall contain the following information:

- (1) Social Security number.

(2) Claimant's name.

(3) Total amount paid each claimant per quarter.] If the insurer seeks reimbursement from the Bureau under section 306(h) of the act, it shall submit the following to the Bureau on a quarterly basis: a notarized statement, signed by an officer of the company, containing an itemized list of payments made to all claimants, submitted no later than the 10th day of the month following the quarter for which advance reimbursement payments have been made. Each itemized entry must contain the following information: the claimant's name, Social Security number and the total amount paid each claimant per quarter.

(c) Changes in a payment schedule to [any] an individual [must] shall be reported to the [Department] Bureau within 10 days of the change. The [Department] Bureau will take credit in the following reimbursable quarter for an overpayment caused by change in a payment schedule.

(d) For auditing purposes, every insurer shall keep records for 3 years FROM THE DATE OF ~~concerning EACH payments and reimbursements~~ made under this section. The records shall be made available for inspection by the Bureau ~~at reasonable times~~ DURING NORMAL BUSINESS HOURS.

(e) If the Bureau believes that the insurer primarily liable for compensation under the act has failed to make ~~any~~ A payment under the act and THIS SECTION ~~the related regulations~~, the Bureau may pay compensation directly to the claimant, for the portion of the compensation which is payable by the Commonwealth under section 306(h) of the act UNTIL THE INSURER RESUMES PAYMENT OF COMPENSATION. ~~Nothing in this section shall require t~~ The Bureau IS NOT REQUIRED to initiate direct payments to a claimant when the insurer is making full payment of the compensation but is not seeking reimbursement under this section.

§ 121.31. Workmen's Compensation Administration Fund.

* * * * *

(c) Insurance carriers shall remit to the [Department] Bureau assessment amounts as follows:

* * * * *

(d) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the [Department] Bureau will calculate the assessment amount

as though an earned premium amount of zero were reported to the Insurance Department.

* * * * *

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

§ 121.32. Office of Small Business Advocate.

(a) The [Department] Bureau 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] Bureau for prompt payment of assessments for the Office of Small Business Advocate, as provided in the act and this chapter.

* * * * *

§ 121.33. Collection of special funds assessments.

(a) The [Department] Bureau will collect assessments for the special funds by calculating the total amount of the following:

(1) What each self-insured employer is liable for paying to the [Department] Bureau.

(2) What each insurance carrier is responsible for collecting from insured employers and remitting to the [Department] Bureau.

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

(1) The [Department] Bureau will transmit to each insurance carrier and self-insured employer a notice of assessment amount to be collected, which shall specify the amount calculated under subsection (a) and the date on which the amount is due.

(2) Each self-insured employer shall timely remit to the [Department] Bureau the amount calculated under subsection (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 Insurance Commissioner and timely remit payment to the [Department] Bureau.

(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] Bureau the total amount calculated under subsection (a)(2).

§ 121.34. Objections to assessments.

(a) A party receiving a notice of assessment amount to be collected from the [Department] Bureau may, within 15 days of receipt, object to the assessment reflected in the notice on the basis that it is excessive, erroneous, unlawful or invalid. Insured employers retain all rights provided under section 717 of the act (77 P. S. § 1035.17).

* * * * *

(d) An objection not conforming to this section or the act will be rejected by the [Department] Bureau. The [Department] Bureau will notify the objecting party of the specific reasons for the rejection. The objecting party shall have 30 days to cure any deficiency.

(e) Upon receipt of an objection which conforms to this section and the act, the Department will hold a hearing in accordance with 1 Pa. Code Part II (relating to [the general rules of administrative practice and procedure] General Rules of Administrative Practice and Procedure). After the hearing, the Department will record its findings on any 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. The amount shall be paid by the objector within 10 days after receipt of the findings. After payment has been made, the objector may initiate an action in the appropriate court to recover the payment of the assessment or any portion thereof. [No] An insurer may not maintain an action to recover payment unless it has previously objected under subsection (a).

§ 121.35. Annual reports of compensation paid.

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



DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

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May 21, 2007

The Honorable Arthur Coccodrilli
Chairman, Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

**Re: Final-form Rulemaking
Department of Labor & Industry
Workers' Compensation, General Provisions, No. 12-67**

Dear Chairman Coccodrilli:

Enclosed is a regulatory package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry for this final-form regulation. This regulation updates and clarifies the existing regulations that govern the Bureau of Workers' Compensation's administration of the Workers' Compensation Act. The regulation will amend the Pennsylvania Code (34 Pa. Code, Chapter 121).

Questions should be directed to John T. Kupchinsky, Director, Bureau of Workers' Compensation, Room 324, 1171 S. Cameron Street, Harrisburg, PA 17104 (Telephone: 717-783-5421; Fax: 717-772-0342; E-mail: jkupchinsk@state.pa.us)

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

Sincerely,

Stephen M. Schmerin

SMS/

Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 12-67
SUBJECT: GENERAL PROVISIONS
AGENCY: DEPARTMENT OF LABOR & INDUSTRY

2007 MAY 21 PM 12:15

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/21	<i>Maryann Eckhart</i>	HOUSE COMMITTEE ON LABOR RELATIONS Representative Belfanti
5/21	<i>Pan Huser</i>	Representative DiGirolamo
5/21	<i>Earlie Restagno</i>	SENATE COMMITTEE ON LABOR & INDUSTRY Senator Gordner
5/21	<i>V. Buxton</i>	Senator Tartaglione
5/21	<i>St. Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 16, 2007