

Regulatory Analysis Form

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2005 JUN 27 PM 2: 34

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) proposes the 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 proposes these 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 proposed 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?

These regulations were adopted on March 15, 1974 and have not been revised in many years, with a few exceptions. The proposed regulations will provide updated guidance to employes, 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.)

Employes, employers, workers' compensation insurers and the Bureau will benefit from these regulations. The proposed regulations will increase the efficiency and effectiveness of the parties' transactions with the Bureau.

Regulatory Analysis Form

(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 employees.

(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. All comments and suggestions have been reviewed and considered.

(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 are anticipated. Obtaining or creating the new form, the Annual Claims Status Report, form LIBC-774, and posting one additional document may be an insignificant cost to employers and insurers and will present no cost to employees or the Bureau. No savings are anticipated. 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 are anticipated. To the extent that local governments are employers, obtaining or creating the new form, the Annual Claims Status Report, form LIBC-774, and posting one additional document may be an insignificant cost. No savings are anticipated. See number 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 are anticipated. To the extent that the Commonwealth is an employer, obtaining or creating the new form, the Annual Claims Status Report, form LIBC-774, and posting one additional document may be an insignificant cost. No savings are anticipated. *See* number 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 new posting.

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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	\$ 51,422,033.00	\$ 52,551,198.00	\$ 49,441,420.00 (as of 8/5/04; closing in 10/04)	\$ 55,000,000.00 (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 proposed regulations require the creation of only one new form, the Annual Claims Status Report, form LIBC-774, (out of a body of approximately 40 forms) and one new posting. However, the annual filing of a Statement of Account of Compensation Paid, form LIBC-392, has been eliminated. Existing forms require few modifications. Therefore, the proposed regulations do not impose any significant additional reporting, record keeping or paperwork requirements on either the Commonwealth or the regulated community.

(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 proposed regulations will be effective when published in the *Pennsylvania Bulletin* as a final-form regulation. 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.

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**FACE SHEET
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(Pursuant to Commonwealth Documents Law)**

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2484

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

BY:

Amy M. Ehrhart

DEPUTY ATTORNEY GENERAL

DATE OF APPROVAL

JUN 16 2005

Check if applicable
Copy not approved.
Objections attached.

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

Department of Labor & Industry
(AGENCY)

DOCUMENT / FISCAL NOTE NO. 12-67

DATE OF ADOPTION:

Stephen M. Schmerin

BY:

Stephen M. Schmerin

TITLE:

Secretary

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY:

[Signature]

DATE OF APPROVAL

5.16.05

Executive Deputy General Counsel

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

PROPOSED RULEMAKING

34 PA. CODE CHAPTER 121

General Provisions

PROPOSED REGULATIONS
Title 34 – Labor and Industry
Part VIII Bureau of Workers' Compensation
Chapter 121

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau) proposes the following amendments to update and clarify the existing regulations that govern the Bureau's administration of the Workers' Compensation Act (act) and the procedures utilized by employees, employers and insurers.

Statutory Authority

The Department proposes these 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).

Background

Chapter 121 (relating to general provisions) was adopted on March 15, 1974 and has not been revised recently, with a few exceptions. The most recent regulatory amendments followed Act 57 of 1997, 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 (relating to definitions), § 121.22 (relating to subsequent injury fund) and § 121.23 (relating to supersedeas fund). Further, the Department added § 121.31 (relating to Workmen's Compensation Administration Fund), § 121.32 (relating to Office of Small Business Advocate), § 121.33 (relating to collection of special funds assessments), § 121.34 (relating to objections to assessments) and § 121.35 (relating to annual reports of compensation paid).

On June 11, 2004, a stakeholder meeting was held. Written comments were also 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 Samule R. Marshall on behalf of The Insurance Federation of Pennsylvania, Inc. All comments and suggestions have been reviewed and considered.

Purpose

These proposed amendments update and clarify 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 Proposed Regulations

The Department proposes to amend § 121.1 (relating to definitions) to include definitions of the following terms: "agreement," "Board," "claimant," "Disease Law" and "employer."

02/25/05

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

The Department proposes to amend § 121.3 (relating to filing of forms) so that the section better reflects the requirements of filing forms. Also, the Department proposes to add subsection (c) to clarify the Bureau's ability to require electronic filing and subsection (d) to clarify how to determine a filing date.

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

The Department proposes to add § 121.3b (relating to posting workers' compensation information) to require the posting of general workers' compensation information at an employer's primary places of business and all employment sites. This new mandatory posting is proposed to provide the opportunity to employees to learn basic workers' compensation information that otherwise may be difficult to obtain.

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

The Department proposes to amend § 121.5 (relating to reporting injuries to the Bureau) to correct the requirements relating to filing an Employer's Report of Occupational Injury or Disease, form LIBC-344. The proposed correction is the elimination of language in previous subsections (b) and (e) regarding disability continuing *more than* or *beyond* the entire day, shift or turn. The language contained in new subsection (c) conforms to section 438 of the act (77 P.S. § 994). Also, the Department proposes to delete unnecessary language discussing variances and to clarify existing language.

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

The Department proposes to amend § 121.7 (relating to notice of compensation payable and notice of temporary compensation payable) to add requirements for filing a Notice of Temporary Compensation Payable, form LIBC-501. Also, the Department proposes to amend § 121.7 to require filing of a Statement of Wages, form LIBC-494A or LIBC-494C, with every Notice of Compensation Payable, form LIBC-495, or Notice of Temporary Compensation Payable, form LIBC-501. The Department also proposes to eliminate language in existing subsection (b) relating to injuries. In order to conform to section 406.1 of the act (77 P.S. § 717.1), proposed subsection (a) references disability. The Department also proposes to allow an employer to file an estimated or amended Notice of Compensation Payable, form LIBC-495, or Notice of Temporary Compensation Payable, form LIBC-501. Finally, the Department proposes to add subsection (f) to allow an employer to file a Notice of Compensation Payable, form LIBC-495, in medical only cases.

The Department proposes to amend § 121.8 (relating to agreements for compensation for disability or permanent injury) 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 proposes to allow an employer to file an estimated or amended Agreement for Compensation for Disability or Permanent Injury, form LIBC-336.

The Department proposes to amend § 121.9 (relating to agreements for compensation for death) to clarify that death must occur from the injury, not *within 7 days* of the injury, to be compensable. Also, the Department proposes to amend § 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 proposes to allow an employer to file an estimated or amended Agreement for Compensation for Death, form LIBC-338.

The Department proposes to reserve § 121.10 (relating to supplemental agreements) because the subject of supplemental agreements is discussed in proposed § 121.17(b) (relating to change in compensation).

The Department proposes to amend § 121.11 (relating to supplemental agreements for compensation for death) to clarify the circumstances on which a change of compensation may be based.

The Department proposes to amend § 121.12 (relating to Bureau review of agreements, notices of compensation payable and notices of temporary compensation payable) to require an amended version of an agreement, Notice of Compensation Payable, form LIBC-495, or Notice of Temporary Compensation Payable, form LIBC-501, where a correction of errors results in an increase of an employee's wage or compensation. Additionally, the Department proposes to amend § 121.12 to require the filing of a Statement of Wages, form LIBC-494A or LIBC-494C, with every amended form under this section.

The Department proposes to amend § 121.13 (relating to denial of compensation) and § 121.14 (relating to weekly wage for occupational disease cases) to clarify existing language.

The Department proposes to amend § 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 proposes to amend § 121.16 (relating to updating claims status) to eliminate the requirement of filing an annual Statement of Account of Compensation Paid, form LIBC-392. The Department proposes, instead, to require the filing of an Annual Claims Status Report, form LIBC-774, on which an insurer will verify information on its claims. Additionally, the Department proposes to amend § 121.16 to require the filing of a Final Statement of Account of Compensation Paid, form LIBC-392, immediately after the final payment of compensation.

The Department proposes to amend § 121.17 (relating to change in compensation) to explain the procedures for obtaining changes in compensation, including termination, suspension, modification and other changes.

The Department proposes to amend § 121.18 (relating to subrogation) to clarify existing language.

The Department proposes to amend § 121.20 (relating to commutation of compensation under section 412 of the act (77 P.S. § 791)) to clarify existing language and to change the reference from a “25-week period” to a “52-week period.”

The Department proposes to amend § 121.21 (relating to reimbursement for silicosis, anthraco-silicosis or coal workers’ pneumoconiosis) to require record retention for 3 years, instead of indefinitely. The Department also proposes to amend § 121.21 to clarify existing language.

The Department proposes to amend § 121.22 (relating to subsequent injury fund) and § 121.23 (relating to supersedeas fund) to clarify existing language.

The Department proposes to reserve § 121.24 (relating to approval of fees). The existing requirements concerning attorney fees have been more appropriately addressed in 34 Pa. Code Chapter 131 (relating to special rules of administrative practice and procedure before workers’ compensation judges).

The Department proposes to amend § 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 orders delivery.

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

The Department proposes to amend § 121.27 (relating to orders to show cause) to clarify the process involved with an order to show cause. Additionally, the Department proposes to amend § 121.27 to eliminate language regarding penalty petitions, which will be placed in § 121.27a.

The Department proposes to add § 121.27a (relating to Bureau intervention and penalties) to address the Bureau’s involvement in penalty petitions.

The Department proposes to reserve § 121.28 (relating to petitions designated as a request for supersedeas) because supersedeas requests have been more appropriately addressed in 34 Pa. Code Chapter 131 (relating to special rules of administrative practice and procedure before workers’ compensation judges).

The Department proposes to amend § 121.30 (relating to 306(h) payments (77 P.S. § 583)) to require record retention for 3 years, instead of indefinitely. Additionally, the Department proposes to amend § 121.30 to add language regarding the Bureau’s ability to make payments within its discretion to a claimant where the employer has failed to make payments. The Department also proposes to amend § 121.30 to clarify existing language.

The Department proposes to amend § 121.31 (relating to Workmen’s Compensation Administration Fund), § 121.32 (relating to Office of Small Business Advocate), § 121.33

(relating to collection of special funds assessments), § 121.34 (relating to objections to assessments) and § 121.35 (relating to annual reports of compensation paid) to clarify existing language.

Affected Persons

The persons affected by these proposed amendments are employees, employers and workers' compensation insurers.

Fiscal Impact

There is no significant fiscal impact associated with these proposed regulations.

Reporting, Recordkeeping and Paperwork Requirements

The proposed regulations require the creation of only one new form, the Annual Claims Status Report, form LIBC-774, and one new posting. However, the annual filing of a Statement of Account of Compensation Paid, form LIBC-392, has been eliminated. Existing forms require few modifications. Therefore, the proposed regulations do not impose any significant additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.

Effective Date

These proposed amendments will take effect when published as final-form regulations 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 regulation.

Contact Person

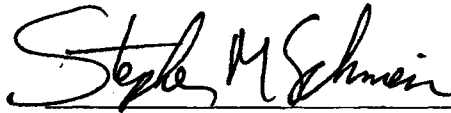
Interested persons may submit written comments to the proposed rulemaking to John Kupchinsky, Bureau Director, Bureau of Workers' Compensation, Department of Labor and Industry, Chapter 121 Regulations-Comments, P.O. Box 15121, Harrisburg, PA, 17105 or to: jkupchinsk@state.pa.us. Written comments must be received within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

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 this proposed rulemaking and a copy of a Regulatory

Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.



Stephen M. Schmerin
Secretary

FISCAL NOTE: 12-67

ANNEX A

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:

- (i) The effects of premium credits granted under deductible elections by insured employers.
- (ii) Premiums not attributable to coverage under the act or [The Pennsylvania Occupational Disease Act (77 P.S. §§ 1201 - 1603)] the Disease Law.
- (iii) Premiums attributable to excess policies written for specified retentions on self-insured employers.

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.

Insurance carrier - An entity or group of affiliated entities subject to The Insurance Company Law of 1921 (40 P.S. §§ 341 - 477d), including the State Workers' Insurance Fund, but not including self-insured employers or runoff self-insurers, with which an employer has insured its liability under section 305 of the act (77 P.S. § 501).

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

Insurer - A workers' compensation insurance carrier which is licensed to insure workers' compensation liabilities in this Commonwealth and acts in this capacity on behalf of insured employers. The term includes a self-insured employer and a runoff self-insurer.

Runoff self-insurer - An employer that had been a self-insurer but no longer maintains a current permit to self-insure under section 305 (77 P.S. § 501) of the act.

Self-insured employer - An employer which has been granted the privilege to self-insure its liability under the act. The term includes a parent company or affiliate which has assumed a subsidiary's or an affiliate's liability upon the termination of the parent-subsiidiary or affiliate relationship, and a runoff self-insurer.

Special funds - Funds maintained under sections 306.2, 443 and 446 of the act (77 P.S. §§ 517, 999 and 1000.2).

§ 121.2. Reserved. [Superseded provisions.]

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 shall 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. 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 10 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.

§ 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 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)).

(b) The information shall be entitled "Workers' Compensation Information" and shall include all of 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.

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

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

(7) 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, PA 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 shall be printed on paper no smaller than 8½ x 11 inches and in font no smaller than 11 point.

§ 121.4. Reserved. [Reproduction of forms.

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 OIDC-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] employer shall file the Employer's Report of Occupational Injury or Disease, form LIBC-344, [shall be filed] with the [Department] Bureau as follows:

(1) Within 48 hours for every injury resulting in death.

(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 A] act (77 P.S. § [991] 994).

(3) If there is no disability, a copy of the report should not be sent to the Department.

(b) The employer shall send a copy of this report to the employe simultaneously with filing it with the Bureau.

(c) A disability that requires a report 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. Reserved. [Supplemental reports.

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 OIDC-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 employe or the employe's dependent.

(2) Pay compensation to the employe or to the employe'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 employe or the employe'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 employe's signature.

(d) If compensation payable under the notice is less than the maximum rate, a statement of wage form, Form OIDC-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.

(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 employe's estimated wages if the employer has not obtained the wages necessary to properly calculate the employe'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."

(e) If the estimated wages or compensation is less than the employe'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 employe's actual wages. Amendments resulting in an increase in the employe's wage or compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements, notices of compensation payable and notices of temporary compensation payable). 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 employe's wage or compensation.

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

§ 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 employe. If the employer and the employe 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 agreement signed by the employer and the employe to the employe.
- (2) Pay compensation to the employe.
- (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. 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, notices of compensation payable and notices of temporary compensation payable), and shall be clearly identified as "Amended." 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, [F] form LIBC-338, shall be executed between [the] an employer and the deceased's dependents [, 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.

(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(s) 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 employe's compensation payable, an Agreement for Compensation for Death, form LIBC-338, based on the employe'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, on receipt of the employe's actual wages. Amendments resulting in an increase in the employe's wage or dependent's compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements, notices of compensation payable and notices of temporary compensation payable), and shall be clearly identified as "Amended." 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 employe's wage or compensation.

§ 121.10. Reserved. [Supplemental agreements.

(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 dependent(s) or personal representative.

(b) An Agreement for Compensation for Death, form LIBC-338, may 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 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 be corrected by filing an amended version of the agreement, 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 employe's wage or compensation. The amended agreement, 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) A Statement of Wages, form LIBC-494A, or Statement of Wages, form LIBC-494C, shall be filed with every amended agreement, Notice of Compensation Payable, form LIBC-495, or Notice of Temporary Compensation Payable, form LIBC-501.

§ 121.13. Denial of compensation.

If compensation is controverted, a Notice of Work[men]er's Compensation Denial,[F] form LIBC-496, shall be sent to the employe or dependent and filed with the Bureau, fully stating the grounds on which the right to compensation is controverted, [with a copy to the Department of Labor and Industry,] within 21 days after notice or knowledge to the employer of the employe's disability or death.

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

For cases involving occupational diseases under the act, [T] the weekly wage will be determined in accordance with section 309 of the [Workers' Compensation A] 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 employe 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 employe 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 dependents for death benefits shall begin from the date of the employe'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.

(d) Compensation due to the date of death shall be paid to the nearest of kin, or in the absence of same, to the estate.

§ 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.

(2) The insurer shall file a completed Annual Claims Status Report, form LIBC-774, to the Bureau each year before April 16.

(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 (77 P.S. § 997).

(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 employe, 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-392, 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 employe has recovered from an injury, or a deceased employe'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.

(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, 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 employe. The completed Supplemental Agreement for Compensation for Disability or Permanent Injury, form LIBC-337, shall be sent to the employe or his dependent(s) 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 employe. 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 § 121.7(a) (relating to notice of compensation payable and notice of temporary compensation payable) are stopped, the employer shall file a Notice Stopping Temporary Compensation, form LIBC-502, and a Notice of Workers' Compensation Denial, form LIBC-496, within 5 days of the last payment or file a Notice of Compensation Payable, form LIBC-495, or file an Agreement for Compensation for Disability or Permanent Injury, form LIBC-336. The employer may not use a Notification of Suspension or Modification Pursuant to §§ 413 (c) & (d), form LIBC-751, to stop temporary payments made under § 121.7.

(e) If termination, suspension or modification of compensation cannot be achieved through subsection (a), (b), (c) or (d), the employer may file a Petition 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 a third party obtains recovery under section 319 of the [Workers' Compensation A] act (77 P.S. § 671), a Third Party Settlement Agreement, [Form OIDC-380] form 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, [F] form LIBC-337, shall 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.

§ 121.19. [] Reserved []].

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

Commutation under section 412 of the [Workers' Compensation A] 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] The commutation amount shall not be paid in [by 25-week] 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. Reimbursement for silicosis, anthraco-silicosis or coal workers' pneumoconiosis. [Coal diseases - claim and reimbursement.]

(a) Claims for compensation for silicosis, anthraco-silicosis or coal workers' pneumoconiosis as defined in section 108(q) of the [Workers' Compensation A] act. (77 P.S. § 27.1(q)), for disability or death, where the date of disability commences or death occurs between July 1, 1973 [,] and June 30, 1976, inclusive, and where the liable employer is seeking to offset part of its liability under section 305.1 of the [Workers' Compensation A] act (77 P.S. § 411.1), shall be instituted by [claim petition filed with the Department of Labor and Industry (Department)] filing a Claim Petition for Workers' Compensation, [on Form OIDC-362] 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 b] 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 (77 P.S. § 411.1), 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 [S]social [S]security number, [shall] contain the claimant's name and [S]social [S]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 OIDC-683.] reported in a format as required by 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 payments and reimbursements made under this section. The records shall be made available for inspection by the Bureau at reasonable times.

(d) If the Bureau [of Workers' Compensation (Bureau) has reason to believe] has information 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 (77 P.S. § 411.1) until [a time] the insurer [or self-insurer] resumes payment of compensation. [Nothing in this section shall require t] The Bureau is not required to initiate direct payments to a claimant where 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:

(1) The employer is responsible for payments due for specific loss under section 306(c) of the act (77 P.S. § 513).

(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:

(i) Self-insured employers shall pay assessments in amounts determined by the following:

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

X The Amount Expended
from the Subsequent
Injury Fund during the
Preceding Calendar Year

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

(ii) The amount expended from the Subsequent Injury Fund during the preceding calendar year, minus the total amount owed by all self-insured employers, as calculated under subparagraph (i), shall equal the aggregate amount to be collected by insurance carriers.

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

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

X Aggregate Amount to be
Collected by Insurance
Carriers

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

(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.

(d) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Insurance Commissioner.

(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:

(1) Self-insured employers shall pay assessments in amounts determined by the following:

Amount of Compensation Paid by a Self-insured Employer During the Preceding Calendar Year	X	The Amount of Supersedeas Payments Made or Accrued as Payable during the Preceding Calendar Year
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Total Amount of
Compensation Paid by All
Insurers During the
Preceding Calendar Year

(2) The amount of supersedeas payments made or accrued as payable during the preceding year, minus the total amount owed by all self-insured employers, as calculated under paragraph (1), shall equal the aggregate amount to be collected by insurance carriers.

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

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

(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.

(c) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Insurance Commissioner.

(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 an [Form LIBC-662, "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 [W]workers' [C]compensation [J]judge for a formal hearing and adjudication.

§ 121.24. Reserved. [Approval of fees.

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 payment, a claimant's payment for workers' compensation or occupational disease compensation 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.

(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. Reserved. [Required information for maximum compensation rate increase.

(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 here 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. 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 will assign the order to show cause to an impartial hearing officer who will schedule a hearing. The hearing 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, where applicable, 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The hearing 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 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.

(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.]

This section supersedes 1 Pa. Code §§ 35.14, 35.37, 35.131 and 35.201 – 35.214.

[(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.]

§ 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 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 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. Reserved. [Petitions designated as a request for supersedeas.

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.]

§ 121.29. [] Reserved[].

§ 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] insurers [and self-insured employers, including the State Workmen's Insurance Fund,] shall have submitted a listing of all pre-March 17, 1968[,] cases on which compensation is [still] payable on July 1, 1975. This listing must have been received in the Bureau no later than July 1, 1975[, and should contain the following particulars:

- (1) Name of claimant.
- (2) Social Security number.
- (3) Bureau file number.
- (4) Claimant's date of birth.
- (5) Date of accident.
- (6) Name of employer.
- (7) Insurer number.

- (8) Current 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 (77 P.S. § 583), 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 shall 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 an[y] individual [must] shall be reported to the [Department] Bureau within 10 days of [the] such 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 concerning payments and reimbursements made under this section. The records shall be made available for inspection by the Bureau at reasonable times.

(e) If the Bureau believes that the insurer primarily liable for compensation under the act has failed to make any payment under the act and 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 (77 P.S. § 583). Nothing in this section shall require the Bureau to initiate direct payments to a claimant where the insurer is making full payment of the compensation but is not seeking reimbursement under this section.

§ 121.31. Workmen's Compensation Administration Fund.

(a) Annual assessments on self-insured employers, under section 446(b) of the act (77 P.S. § 1000.2(b)), shall be in amounts determined by the following:

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

X

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

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

(b) The approved budget of the Workmen's Compensation Administration Fund for the current fiscal year, minus the total amount owed by all self-insured employers, as calculated under subsection (a), shall equal the aggregate amount to be collected by insurance carriers.

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

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

X

Aggregate Amount to be
Collected by Insurance
Carriers

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

(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.

(e) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Insurance Commissioner.

(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.

(b) Annual assessments under section 1303 of the act (77 P.S. § 1041.3) shall be in amounts as determined by the following formula:

Amount of Compensation Paid by an Insurance Carrier, but not a Self-insured Employer or Runoff Self-insurer, During the Preceding Calendar Year	X	The Approved Budget of the Office of Small Business Advocate for the Current Fiscal Year
<hr/>		
Total Amount of Compensation Paid by All Insurance Carriers, but not Self-insured Employers or Runoff Self-insurers, During the Preceding Calendar Year		

§ 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).

(b) Objections shall be set forth in numbered paragraphs, shall specifically state the facts necessary to determine the validity of the challenged assessment or assessment amount and shall be accompanied by a supporting memorandum documenting the legal grounds for the objections.

(c) An objection to assessment or assessment amount shall be accompanied by a proof of service as specified in 1 Pa. Code § 33.35 (relating to proof of service) and a notice of appearance as specified in 1 Pa. Code § 31.24 (relating to notice of appearance), and shall be served on all interested parties as specified in 1 Pa. Code § 33.32 (relating to service by a participant).

(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 g]General [r]Rules of [a]Administrative [p]Practice and [p]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 insurer may

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 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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June 27, 2005

The Honorable John R. McGinley, Esquire
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

Re: Proposed Rulemaking
Department of Labor & Industry
Bureau of Workers' Compensation Procedures, No. 12-67

Dear Chairman McGinley:

Enclosed please find a regulatory package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry for this proposed rulemaking. This proposed rulemaking concerns an update and clarification of the practices of the Bureau of Workers' Compensation in the administration of the Workers' Compensation Act and of employees, employers, workers' compensation insurers and other interested parties in their transactions with the Bureau.

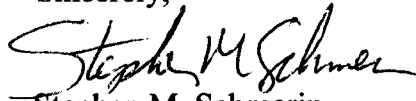
The proposed rulemaking will amend the Pennsylvania Code (34 Pa. Code, Chapter 121).

Written comments, suggestions or questions should be directed to John Kupchinsky, Bureau Director, Bureau of Workers' Compensation, Department of Labor and Industry, Chapter 121 Regulations-Comments, P.O. Box 15121, Harrisburg, PA, 17105 (Telephone: 717-783-5421; Fax: 717-772-0342; E-mail: jkupchinsk@state.pa.us)

Proposed Rulemaking
Bureau of Workers' Compensation Procedures,
No. 12-67
Page 2

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

Sincerely,



Stephen M. Schmerin

Enclosures

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

I.D. NUMBER: 12-67
SUBJECT: General Provisions
AGENCY: DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

- Proposed Regulation
 Final Regulation
 Final Regulation with Notice of Proposed Rulemaking Omitted
 120-day Emergency Certification of the Attorney General
 120-day Emergency Certification of the Governor
 Delivery of Tolled Regulation
 a. With Revisions b. Without Revisions

RECEIVED
 2005 JUN 27 PM 2:34
 DEPARTMENT OF LABOR & INDUSTRY

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6-27-05	<i>[Signature]</i>	HOUSE COMMITTEE ON LABOR RELATIONS
6-27-05	<i>Barb Oysand</i>	
6/27/05	<i>Donna L. Kraus</i>	SENATE COMMITTEE ON LABOR & INDUSTRY
6/27/05	<i>Kelley Baxton</i>	
6/27/05	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
6/27/05	<i>Wayne Barnes</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)