

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Department of Labor and Industry,
Workers' Compensation Appeal Board and
Office of Adjudication

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

12-84

IRRC Number: 2724.

(3) Short Title

Special Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board; Special Rules of Administrative Practice and Procedure before Workers' Compensation Judges (collectively, the Rules).

(4) PA Code Cite

34 Pa. Code Chapter 111
34 Pa. Code Chapter 131

(5) Agency Contacts & Telephone Numbers

Primary Contacts: Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance, 651 Boas Street, Harrisburg, PA 17121 (717) 787-5082;
Susan McDermott, Chairperson, Workers' Compensation Appeal Board; 901 North 7th Street, 3rd Floor South, Harrisburg, PA 17102-1412 (215) 560-4583
Secondary Contact: Thomas J. Kuzma, Deputy Chief Counsel, Bureau of Worker's Compensation, 1171 South Cameron Street, Room 327, Harrisburg, PA 17104 (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 non-technical language.

The Department of Labor and Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office), propose the following amendments to Chapters 111 and 131 of 34 Pa. Code to clarify and provide additional guidance for practice and procedure before the Board and workers' compensation judges (judges).

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

The Department proposes these Rules under the authority contained in sections 401.1 and 435(a) and 435(c) of the Workers' Compensation Act (act) (77 P.S. §§ 710 and 991(a) and (c)), section 2205 of the Administrative Code of 1929 (71 P.S. § 565) and section 414 of the Occupational Disease Act (77 P.S. § 1514).

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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 rules are not mandated by any law. Regulatory action is required, however, to update certain portions of the Rules in accordance with amendments to the act passed in 2006 in the act of November 9, 2006 (P. L. 1362, No. 147) (Act 147), and an amendment that impacts the act (the act of July 7, 2006 (P. L. 1055, No. 109) (Act 109)). Moreover, the Rules have not been revised since 2002 and do not reflect technological advances subsequently implemented and anticipated by the Board and Bureau of Workers' Compensation (Bureau).

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

The Rules will provide guidance to judges, Board Commissioners, Bureau and Board staff, and litigants in the workers' compensation system, regarding practice and procedures before the Board, the Office and judges. These Rules will address changes made in practice and law since the Rules were last reviewed and altered. The Rules will also expedite the adjudication of workers' compensation claims, reduce paperwork requirements among litigants, and reduce expenses for litigants by incorporating technology into workers' compensation proceedings.

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

Non-regulation would lead to growing inconsistencies in the manner in which the Board, the Office, judges and litigants address procedural circumstances or requirements that are not currently regulated.

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

The Board, the Office and judges who will utilize the regulations in forums designed for resolution of workers' compensation litigation, and the workers' compensation insurers, employers (including self-insured employers) and injured workers (claimants) who litigate in these forums will benefit from the Rules. For example, these proposed Rules now permit the filing of Board and Bureau forms by electronic means, and specify the method for electronic filing and proof of service.

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

No one will be adversely affected by the regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The persons, groups or entities 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; approximately 90 judges; Board commissioners and officials; employees of the Department; and participants in the Pennsylvania workers' compensation system, including injured employees, health care providers, employers, workers' compensation insurers and their respective counsel.

(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.

In 2006, the Rules Committee, which was established by the Secretary of the Department of Labor and Industry in 1980, reconvened to consider incorporating the following into the Rules: (1) legislative amendments; (2) changes in workers' compensation jurisprudence which occurred since these Rules were last amended in 2002; and (3) comments received from litigants in the workers' compensation community since the 2002 publication of the Rules. The committee widely circulated a First Draft of Proposed Amendments and received written comments from various parties regarding recommended changes. Similarly, the committee allowed interested parties an opportunity to address the committee, and has undertaken an outreach program through announcements and addresses at workers' compensation section meetings of the Pennsylvania Bar Association and with groups of interested attorneys. Additionally, a teleconference was held with representatives of the Pennsylvania Chamber of Business and Industry. Approximately 850 people attended or participated in the meetings.

(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 costs are anticipated. The Rules may provide the following savings to the regulated community: (1) reduced copying and mailing costs, as Board and Bureau forms may be filed and served electronically; and (2) reduced overall litigation expenses attributable to the more expeditious process defined by the regulations.

Regulatory Analysis Form

(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 costs are anticipated. To the extent that state government is an employer, the Rules may provide the following savings: (1) reduced copying and mailing costs, as Board and Bureau forms may now be filed and served electronically; and (2) reduced overall litigation expenses attributable to the more expeditious process defined by the Rules.

(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 costs are anticipated. To the extent that state government is an employer, the Rules may provide the following savings: (1) reduced copying and mailing costs, as Board and Bureau forms may now be filed and served electronically; and (2) reduced overall litigation expenses attributable to the more expeditious process defined by the Rules.

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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 savings. However, the Rules may provide the following savings to workers' compensation litigants: (1) reduced copying and mailing costs, as Board and Office forms may now be filed and served electronically; and (2) reduced overall litigation expenses attributable to the more expeditious process defined by the Rules.

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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	\$ 33,245,881	\$ 32,033,389	\$ 31,284,545	\$ 26,296,868
Non-BWC programs that may be impacted	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable

(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. However, the Rules may provide the following savings to workers' compensation litigants: (1) reduced copying and mailing costs, as Board and Office forms may now be filed and served electronically; and (2) reduced overall litigation expenses attributable to the more expeditious process defined by the Rules.

(22) Describe the non-regulatory 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 are therefore unsuited to the purposes of these Rules, which are to provide updated information and guidance to an already existing act and regulations. Procedures of practice must be enforceable through regulation. Additionally, the proposed amendments to the Rules ensure that parties will continue to be advised of up-to-date rules for practice and procedure before the Board, the Office and judges.

(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 Rules 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. However, the proposed Rules are likely to enhance the Commonwealth's competitive advantage because the amendments will provide up-to-date guidance for litigation of workers' compensation matters. The amendments aim to address changes made in practice and law since the Rules were last reviewed and altered, expedite the adjudication of workers' compensation claims, reduce paperwork requirements among litigants, and reduce expenses for litigants by incorporating technology into workers' compensation proceedings.

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

Yes. These Rules will amend 34 Pa. Code Chapter 111 (relating to the Board) and 131 (relating to the Office and judges). The regulations will provide additional guidance for the litigation of matters before the Board, the Office and judges, and refine existing Rules governing practice before the Board, the Office and judges. The Rules will incorporate changes made necessary by recent legislative amendments and advise the parties of up-to-date rules for practice and procedure before the Board, the Office and judges.

(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 prior to consideration of the proposed rulemaking, except those required by the Regulatory Review Act, or as otherwise ordered by the Independent Regulatory Review Commission. Significant input from the workers' compensation community was provided in the drafting process.

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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 amendments do not require the creation of any new forms. However, the proposed amendments do incorporate the mandate in Act 109 to report the existence or non-existence of any child support order to a judge before the award of certain benefits under the act, and whether payments are current. There are no other additional reporting, recording or paperwork requirements for 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. The amendments as a whole will expedite the procedures and assist all workers' compensation litigants.

(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 Rules will be effective when published in the *Pennsylvania Bulletin* as final-form regulations. These Rules 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 Rules during their use in proceedings before the Board, the Office and judges. Participants in workers' compensation proceedings will likely raise issues relating to the Rules. Corrections can be initiated, as necessary, based upon information obtained in these proceedings. Additionally, the Rules Committee will continuously monitor the effectiveness of these Rules.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

[Signature]
BY:

DEPUTY ATTORNEY GENERAL
AUG 13 2008
DATE OF APPROVAL

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. **12-84**

DATE OF ADOPTION:

BY:

[Signature]
Sandi Vito

TITLE:

Acting Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

[Signature]
BY: Andrew Clark

Deputy General Counsel
JUL 17 2008
DATE OF APPROVAL:

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

PROPOSED RULEMAKING

34 Pa. Code Chapter 111

Special Rules of Administrative Practice and Procedure Before the Workers' Compensation Appeals Board

34 Pa. Code, Chapter 131

Special Rules of Administrative Practice and Procedure Before Workers' Compensation Judges

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CHS. 111 AND 131]

The Department of Labor and Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office), proposes amendments to clarify and provide detailed guidance for practice and procedure before the Board, the Office and workers' compensation judges (judges). The Department also proposes to amend Chapters 111 and 131 (relating to special rules of administrative practice and procedure before the Workers' Compensation Appeal Board; and special rules of administrative practice and procedure before workers' compensation judges) (Rules) to provide additional guidance for the litigation of matters before the Board, the Office and judges, and to refine existing Rules governing practices and procedures before the Board, the Office and judges.

Statutory Authority

The Department proposes these Rules under the authority contained in sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (act) (77 P. S. §§ 710 and 991(a) and (c)), and section 2205 of The Administrative Code of 1929 (71 P. S. § 565), as well as section 414 of the Occupational Disease Act (77 P. S. § 1514).

Background

In 1980, the Secretary of the Department established a Rules Committee (committee) to develop rules and procedures for the workers' compensation system. The committee consisted of a Board representative, judges, equal numbers of representatives of the claimant and defense bar and Department representatives. This committee was reactivated in 1987 to revise the Rules. Revisions to the Board Rules became effective on April 8, 1989 and revisions to the judges' Rules became effective on March 30, 1991. The committee was inactive until 1996, when it reconvened to incorporate comments received from the workers' compensation community, legislative amendments and changes in workers' compensation jurisprudence which occurred since the 1991 publication. As a result of this consideration, the Board and the judges' Rules in their present form became effective on December 7, 2002.

In the fall of 2006, it became evident that further revisions to the Board and the judges' Rules were necessary to incorporate legislative amendments, various appellate decisions and the Department's ability to accept filings electronically. Additionally, from 2002 to the present, the committee received written comments from various members of the workers' compensation community suggesting changes to the 2002 publication of the Rules. The commentators included members of the bar and representatives of various parties who litigate within the Pennsylvania workers' compensation system. Since assembling in 2006, the committee established four subcommittees to review the various subchapters and specific provisions of the judges' Rules, and one subcommittee to address the Board Rules. Each subcommittee

considered each of the written comments assigned to it and any other issues which the entire committee determined warranted consideration. The subcommittees met separately and made recommendations to the committee, which as a whole reviewed the recommendations and created a draft of proposed revisions. During 2007, the draft was widely circulated throughout the workers' compensation community.

Thereafter, interested parties were provided with an opportunity to address the committee. Since July of 2007, the committee has undertaken an outreach program via the statewide judges' conference and workers' compensation section meetings of various bar associations and with groups of interested attorneys. Additionally, on December 7, 2007, a telephone conference was held with the Pennsylvania Chamber of Business and Industry.

As a result of the outreach program, the committee received numerous written comments and suggestions, each of which was considered in great detail by the committee before revising the Rules. The revisions were approved by the committee on February 14 and March 14, 2008, and were incorporated into this rulemaking.

Purpose

These proposed amendments clarify and expedite the procedures in the workers' compensation system and update existing Rules to ensure compliance with amendments to the act and various appellate court decisions. The present Rules have not been comprehensively reviewed since at least 2002. Since that time, the act has been amended, and a change was made to the law governing child support payments that impacts certain workers' compensation awards. *See* the act of November 9, 2006 (P. L. 1362, No. 147) (Act 147); and the act of July 7, 2006 (P. L. 1055, No. 109) (Act 109). Additionally, advances in technology, including the ability of the Bureau of Workers' Compensation (Bureau) to accept certain filings electronically and the anticipation that the Board will also obtain such capability, prompted the need for these amendments. The proposed amendments incorporate these necessary changes, and ensure that parties will continue to be advised of up-to-date Rules for practice and procedures before the Board, the Office and judges.

Affected Persons

Those affected by these proposed amendments include the Workers' Compensation Appeal Board Commissioners and officials, employees of the Department of Labor and Industry, the Office of Adjudication and workers' compensation judges, as well as attorneys and litigants in the Pennsylvania workers' compensation system.

Fiscal Impact

There is no significant impact associated with this proposed rulemaking. However, the proposed amendments may provide the following savings to the regulated community: (1) reduced copying and mailing costs, as Board and Bureau forms may now be filed and served electronically; and (2) reduced overall litigation expenses attributable to the more expeditious process defined by the Rules.

Summary of Proposed Rulemaking

These proposed amendments clarify and provide detailed guidance for practice and procedure before the Board, the Office and judges.

Chapter 111

Special Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board

The Department proposes to amend Chapter 111 to incorporate the Board's anticipated ability to accept certain filings electronically, and to allow service electronically.

The Department proposes to amend:

Section 111.3 (relating to definitions) to clarify the filing date if delivering by hand or electronically.

Section 111.11 (relating to content and form) to clarify that any reference to forms includes paper forms or the electronic format prescribed by the Board.

Section 111.12 (relating to filing, service and proof of service) to provide the mechanism for service by electronic filing.

Chapter 131

Special Rules for Administrative Practice and Procedure before Workers' Compensation Judges

The Department, through this proposed rulemaking, proposes to:

Amend § 131.3 (relating to waiver and modification of rules) to specify that mandatory mediation will not be assigned to an adjudicating judge.

Amend § 131.5 (relating to definitions) to include definitions for the following terms: "Adjudicating judge", "Director of Adjudication", "Judge Manager", "Mediating judge", "Mediation", "Office of Adjudication", "Uninsured Employers Guaranty Fund" and "Voluntary settlement conference". In addition, the Department proposes to amend the following definitions: "Act" to incorporate the provision of the act relating to the Uninsured Employers Guaranty Fund ("UEGF"), "Additional defendant" to clarify that the UEGF cannot be joined in a proceeding, "Defendant" to include the UEGF, except for purposes of joinder, penalties or assessment of counsel fees, "Judge" to clarify that the Office of Adjudication, not the Bureau, is responsible for assignments, and "Party" to clarify that a health care provider and the UEGF can be a party to a proceeding. The proposed amendments to this section are intended to define terms used throughout this chapter and to clarify the various methods of resolving issues that are available to parties under the act.

Amend § 131.11 (relating to filing, service and proof of service) to incorporate the Bureau's ability to accept filings electronically, and to provide the mechanism for electronic service.

Amend § 131.13 (relating to continuances or postponements of hearings) to incorporate the act's "good cause shown" standard that a judge must apply to a request for continuance or hearing postponement.

Amend § 131.22 (relating to transfer of cases or petitions on agreement of all parties) to clarify that the Office of Adjudication is one of the parties that must give consent before a case is transferred to a different judge.

Amend § 131.41 (relating to request for supersedeas or reconsideration of supersedeas) to clarify that a judge can modify a previous grant or denial of supersedeas on the judge's own motion.

Amend § 131.50a (relating to employee request for a special supersedeas hearing under sections 413(c) and 413(d) of the act) to clarify the current procedure for a special supersedeas hearing under section 413(c) and (d) of the act (77 P.S. §§ 774.2 and 774.3) consistent with the Court's decision in *U.S. Airways v. W.C.A.B. (Rumbaugh)*, 854 A.2d 411 (Pa. 2004).

Amend § 131.52 (relating to first hearing procedures) to streamline the rule and to incorporate the act's mandate that judges create a trial schedule before or during the first hearing on the matter. Additionally, to incorporate the change of the name of a Bureau form referenced in the provision.

Amend § 131.53 (relating to procedures subsequent to the first hearing) to clarify that a judge may conduct conferences by any electronic means. The Department proposes deleting subsection (f), since the scheduling of medical examinations will be handled in § 131.52 (relating to first hearing procedures).

Amend § 131.53a (relating to consolidated hearing procedure) to clarify that judges can modify the rules governing consolidated hearings, so long as the procedures adopted are consistent with the act.

Add § 131.53b (relating to bifurcation) to provide a mechanism for a judge to bifurcate proceedings, in order to promote the expeditious resolution of the proceedings.

Amend § 131.54 (relating to manner and conduct of hearings) to delete the reference to "Bureau".

Add § 131.56 (relating to withdrawal of appearance) to provide a mechanism for an attorney to withdraw from the proceedings in conformance with the Pennsylvania Rules of Professional Conduct. The proposed amendments require an attorney to seek leave to withdraw from the adjudicating judge if another attorney is not simultaneously entering an appearance. The proposed amendments also provide that a hearing will be held on any objection or on the adjudicating judge's own motion. Further, an adjudicating judge shall grant the request unless there is prejudice to the parties or proceedings. Additionally, the proposed amendments specify

that an adjudicating judge has the authority to resolve cost and fee disputes so long as a fee agreement or petition was filed before discharge and/or withdrawal of counsel.

Amend § 131.57 (relating to compromise and release agreements) to clarify that subsection (d) does not apply if a resolution hearing was requested in accordance with § 131.60 (relating to resolution hearings).

Add § 131.59 (relating to alternative dispute resolution) to clarify that parties are not limited in using mediation or other forms of alternative dispute resolution for the exclusive purpose of achieving a compromise and release agreement.

Add § 131.59a (relating to voluntary settlement conferences) to clarify that the requirement that parties participate in mandatory mediation does not prevent participation in a voluntary settlement conference. Additionally, the proposed amendments set forth that voluntary settlement conferences are subject to 42 Pa. C.S. § 5949 (relating to confidential mediation communications and documents). The proposed amendments also clarify that, although an adjudicating judge cannot conduct the mandatory mediation, the adjudicating judge can conduct a voluntary settlement conference upon the parties' request.

Add § 131.59b (relating to mandatory mediation) to specify that an adjudicating judge cannot conduct the mandatory mediation conference, nor can the mandatory mediating judge participate in any decision on the merits of the petition(s). Additionally, the proposed amendments set forth that the confidentiality provisions of 42 Pa. C.S. § 5949 (relating to confidential mediation communications and documents) are applicable to mandatory mediation proceedings, with certain enumerated exceptions. Finally, the proposed amendments also provide that the adjudicating judge shall have the authority to impose sanctions for a party's failure to participate in mandatory mediation, and sets forth the provisions of the act and Rules that the adjudicating judge may consider when imposing sanctions.

Add § 131.60 (relating to resolution hearings) to establish procedures for requesting a resolution hearing and the assignment of judges to the resolution hearing.

Amend § 131.66 (relating to the admissibility of oral depositions) to clarify the procedure for objecting to a deposition exhibit.

Amend § 131.111 (relating to decisions of judges) to provide a mechanism for a claimant to report to a judge the existence or non-existence of a child support order and whether payments are current.

Reporting, Recordkeeping and Paperwork Requirements

The proposed amendments do not require the creation of any new forms. However, the proposed amendments do incorporate Act 109's mandate to report the existence or non-existence of any child support order to a judge before the award of certain benefits under the act, and whether payments are current. There are no other additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.

Effective Date

These proposed amendments will be effective on publication in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date is necessary for these amendments. The Department will continue to monitor the impact and effectiveness of the regulations.

Regulatory Review

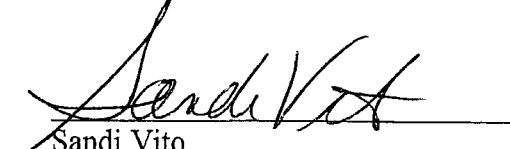
Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 26, 2008 the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor 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 (71 P. S. § 745.5(g)), 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 that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final-form publication of the rules, by the Department, the General Assembly and the Governor of objections raised.

Contact Persons and Public Comment

The contact persons are: (1) with respect to the Judges' Rules, Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance, Department of Labor and Industry, 651 Boas Street, Harrisburg PA 17121 (717) 787-5082; and (2) with respect to the Board Rules, Susan McDermott, Chairperson, Workers' Compensation Appeal Board, 901 North Seventh Street, 3rd Floor South, Harrisburg, PA 17102-1412 (215) 560-4583.

Interested persons may submit written comments to Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance, Department of Labor and Industry, WCAB/WCJ Regulations -- Comments, 651 Boas Street, Harrisburg, PA 17121, 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.


Sandi Vito
Acting Secretary

Fiscal Note: 12-84.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VII. WORKERS' COMPENSATION APPEAL BOARD

CHAPTER 111. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND
PROCEDURE BEFORE THE WORKERS' COMPENSATION APPEAL BOARD

Subchapter A. GENERAL PROVISIONS

§ 111.3. Definitions.

* * * *

Filing – Delivery **[in person or]** by mail, **in person or electronically**. If filing **[is]** by mail, it is deemed complete upon deposit in the United States mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid. **If filing by hand delivery or electronically, the filing date is the Board's date of receipt.**

* * * *

§ 111.11. Content and form.

(a) An appeal or cross appeal shall be filed with the Board on a form provided by the Board. **[or on a form containing substantially the following information:] All references to forms shall mean paper forms or an electronic format prescribed by the Board. All forms shall contain the following information:**

* * * *

§ 111.12. Filing, service and proof of service.

(a) **When filing by mail or in person, [A]an original and two copies of each appeal or cross-appeal shall be filed. Only the original appeal shall have attached a copy of the judge's decision which is in question as required by § 111.11(a)(5) (relating to content and form).**

(b) When filing electronically, an original of each appeal or cross-appeal shall be filed. If the appeal is filed electronically, the Board will obtain a copy of the judge's decision from the Office of Adjudication.

[(b)] (c) The petitioner shall serve a copy of any appeal upon all parties and the judge.

[(c)] (d) The respondent shall serve a copy of any cross appeal upon all parties and the judge.

[(d)] (e) The petitioner or respondent shall, concurrently with the filing of an appeal or cross appeal, on a form prescribed by the Board or in substantial compliance therewith, file a proof of service with the Board containing:

- (1) A statement of the date of service.
- (2) The names of parties and judge served.
- (3) The mailing address, the applicable zip code and the manner of service on the parties and judge served.

[(e)] (f) Subsections (a) – [(d)] (e) supersede 1 Pa. Code §§ 31.26, 33.15, 33.21 – 33.23, 33.32, 33.33 and 33.35 – 33.37.

PART VIII. BUREAU OF WORKER'S COMPENSATION

CHAPTER 131. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE WORKERS' COMPENSATION JUDGES

Subchapter A. GENERAL PROVISIONS

§ 131.3. Waiver and modification of rules.

(a) The judge may, for good cause, waive or modify a provision of this chapter, **except as otherwise provided in § 131.59b(a) (relating to mandatory mediation)**, upon motion of a party, agreement of all parties or upon the judge's own motion.

* * * *

§ 131.5. Definitions.

* * * *

Act—The Pennsylvania Workers' Compensation Act, **as amended** (77 P. S. §§ 1 — 1041.4 and 2501-- [2506] 2708).

Additional defendant—An insurance carrier, the Commonwealth or an employer, other than the insurance carrier or employer against which the original petition was filed, joined under this chapter[.], **not including the Uninsured Employers Guaranty Fund.**

Adjudicating judge – **A judge assigned to hold hearings and issue a decision or decisions relating to a petition or petitions.**

* * * *

Defendant—An employer, insurance carrier and the Commonwealth, unless specifically designated individually[.], **and the Uninsured Employers Guaranty Fund, except for purposes of joinder, penalties or assessment of counsel fees under section 440 of the act (77 P.S. § 996).**

Director of Adjudication – **The individual specified in section 1402 of the act (77 P.S. § 2502).**

* * * *

Judge—A workers' compensation judge assigned by the [Bureau] Office of Adjudication as provided in sections 401 and 401.1 of the act (77 P. S. §§ 701 and 710) or assigned by the [Bureau] Office of Adjudication to determine a petition filed under the act or the Disease Law.

Judge Manager – A workers' compensation judge with management responsibilities appointed pursuant to the Civil Service Act (71 P.S. §§ 741.1 – 741.1005).

Mediating Judge – A judge assigned to mediate a petition or petitions in accordance with the provisions of sections 401 and 401.1 of the act (77 P.S. §§ 701 and 710) and this chapter.

Mediation – A conference conducted by a judge, as authorized by sections 401 and 401.1 of the act (77 P.S. §§ 701 and 710), having as its purpose an attempt to reconcile any or all disputes under the act or this chapter existing between contending parties.

Office of Adjudication – The Office of the Department created by section 1401(a) of the act (77 P.S. § 2501).

Party—A claimant, defendant, employer, insurance carrier, additional defendant, health care provider and, if relevant, the Commonwealth and the Uninsured Employers Guaranty Fund. An act required or authorized by this chapter, to be done by or to a party, may be done by or to that party's counsel of record.

* * * * *

Uninsured Employers Guaranty Fund – The special fund established by Article XVI of the act.

Voluntary settlement conference – A conference conducted by a judge at the request of contending parties, having as its purpose an attempt to reconcile any or all disputes existing between those parties.

Subchapter B. TIME

§ 131.11. Filing, service and proof of service.

(a) Whenever filing is required by this chapter, it is deemed complete upon **one of the following: [delivery in person or, if by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid.]**

(1) **Delivery in person.**

(2) **If by electronic submission, upon receipt at the electronic address and in a format as prescribed by the Department and published in the *Pennsylvania Bulletin*.**

(3) **If by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid.**

(b) Whenever service is required by this chapter, it is deemed complete upon **one of the following**: [delivery in person or, if by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid, except as provided in § 131.81(b) (relating to subpoenas).]

(1) **Delivery in person.**

(2) **If by electronic submission, upon receipt and in a format as prescribed by the Department and published in the *Pennsylvania Bulletin*.**

(3) **If by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid, except as provided in § 131.81(b) (relating to subpoenas).**

* * * * *

(d) Whenever a proof of service is required by this chapter, the proof of service shall contain the following:

* * * * *

(3) The mailing address, the applicable zip code and the manner of service on the judge and others served, **and, where applicable, the e-mail address to which service was made.**

(e) Unless otherwise specifically provided in this chapter, whenever the filing or service is required to be made upon the Bureau, it shall be made to the principal office of the Bureau at: 1171 South Cameron Street, Harrisburg, Pennsylvania 17104-2501, (717) 783-5421, or another address and telephone number as may be published in the *Pennsylvania Bulletin*. **Electronic filing and service on the Bureau shall be at the electronic address and in a format as prescribed by the Bureau and published in the *Pennsylvania Bulletin*.**

* * * * *

§ 131.13. Continuances or postponements of hearings.

* * * * *

(c) A continuance or postponement may be granted as set forth in this chapter for **[substantial or compelling reasons] good cause shown** at the discretion of the judge, if the continuance or postponement is consistent with this chapter and its purpose of providing an orderly and expeditious determination of proceedings before judges.

* * * * *

(j) In ruling on requests for a continuance or postponement, the judge may consider one or more of the following, giving consideration to subsection (a):

* * * * *

(8) Another reason deemed **[to be substantial or compelling]** by the judge **to be for good cause shown** and consistent with this chapter and the purposes of the act and the Disease Law.

§ 131.22. Transfer of cases or petitions on agreement of all parties.

(a) If the transfer of the case is agreed to by the **[Bureau] Office of Adjudication**, the parties and the judge, the **[Bureau] Office of Adjudication** will promptly reassign the case or petition. Notice of reassignment will be given to all parties.

* * * * *

§ 131.41. Request for supersedeas or reconsideration of supersedeas.

* * * * *

(b) After a hearing, the judge may grant or deny the request for supersedeas in whole or in part. The grant or denial may be for specified or indefinite periods and may be subject to conditions that the judge orders to implement the intent of the act, Disease Law or this chapter. If a supersedeas has been granted or denied in whole or in part, the judge may, upon request **or on the judge's own motion**, and after hearing, review and modify the grant or denial as warranted.

* * * * *

§ 131.50a. Employee request for special supersedeas hearing under sections 413(c) and 413 (d) of the act.

* * * * *

(c) During the course of a challenge hearing, the issues are limited to determining whether the claimant has stopped working or is earning the wages stated in the Notice of Suspension or Modification under sections 413(c) or 413(d) of the act (77 P.S. §§ 774.2 and 774.3) and the challenge shall be decided only on those issues.

(d) If the employer has filed a separate petition requesting supersedeas, the judge may receive evidence and issue a separate decision on the request for supersedeas if the judge determines the claimant will not be prejudiced by a ruling at that time.

[(c)](e) The judge to whom the notice of challenge has been assigned will issue a written order on the challenge within 14 days of the hearing.

[(d)](f) If the judge fails to hold a hearing within 21 days or fails to issue a written order approving the suspension or modification of benefits within 14 days of the hearing, the insurer shall reinstate the employee's workers' compensation benefits at the weekly rate the employee received prior to the insurer's suspension or modification of benefits under sections 413(c) or 413(d) of the act (77 P.S. §§ 774.2 and 774.3).

[(e)] (g) Subsections (a) – **[(d)] (f)** supersede 1 Pa. Code §§ 35.161, 35.162, 35.190 and 35.225.

* * * * *

§ 131.52. First hearing procedures.

(a) The purpose of this chapter is to provide a fair and prompt hearing process, to allow all parties to introduce appropriate evidence and to receive a timely decision from the judge. Where practicable and appropriate, the entire record relating to any petition shall be completed at the initial hearing[.], **recognizing that [(b) T]** the hearing process may differ based upon several variables including geographic location, number of parties involved, case volume and availability of experts for testimony.

[(c)] (b) The hearing process chosen in any specific case, including a determination of whether testimony will be accepted at the initial hearing, is within the discretion of the judge. **At or before the initial hearing by written order or on the record, the judge shall establish:**

(1) Specific deadlines for the presentation of evidence by the parties.

(2) Dates for future hearings.

(3) Specific date and time for the mediation conference unless, for good cause shown, the judge determines at the first hearing or subsequently that mediation would be futile.

(4) Dates for setting any medical examinations to be scheduled.

[(d)] (c) The moving party, at the first hearing, shall advise the judge and opposing parties of the following:

* * * * *

[(e)] (d) The moving party, at the first hearing, unless otherwise directed by the judge, shall offer and have marked for identification available exhibits of the moving party.

[(f)] (e) The parties shall provide the judge with all documents required by law to be filed with the Bureau and which are relevant to issues in dispute with the same injury date and pertaining to the same claim. The judge will place those documents in evidence along with any other documents required to be filed by law with the Bureau or prior judges and which the judge deems relevant to the proceeding. The judge and the employee may not introduce the **[Employer's Report of Injury or Occupational Disease] First Report of Injury** into evidence.

[(g)] (f) Evidence furnished under this section does not become part of the record, unless otherwise admissible.

[(h)] (g) Unless otherwise ordered by the judge, the moving party shall present testimony.

[(i)] (h) Subsections (a) – **[(h)] (g)** supersede 1 Pa. Code §§ 35.101 – 35.106, 35.111 – 35.116, 35.121 – 35.128, 35.137, 35.138, 35.155 and 35.161 – 35.169.

§ 131.53. Procedures subsequent to the first hearing.

* * * * *

(d) The parties or the judge may request a conference at any time which may be held in person, by telephone, video, or any other electronic manner as directed by the judge.

[(d)] (e) A party wishing to present testimony in the form of rebuttal or surrebuttal shall notify the judge in writing within 21 days after conduct of the hearing or deposition at which the testimony to be rebutted or surrebutted has been given.

[(e)] (f) Following a request to present rebuttal or surrebuttal testimony, the testimony shall be presented at a hearing or deposition provided the testimony shall be taken no later than 45 days after the conclusion of the case of the party presenting the testimony or evidence to be rebutted or surrebutted.

[(f) Dates of the medical examinations, if not scheduled prior to the first hearing actually held, shall be scheduled within 45 days after the first hearing actually held.]

* * * * *

§ 131.53a. Consolidated hearing procedure.

(a) One day trials or other consolidated hearing procedures may be scheduled and conducted pursuant to this [ese rules] chapter to the extent practical. The judge may waive or modify this [ese rules] chapter as may be appropriate and adopt and direct procedures which are fair and just for a determination of the issues[.] **consistent with the provisions of the act.**

§ 131.53b. Bifurcation.

(a) The judge may, upon request or upon the judge's own motion, consider bifurcation of issues to promote expeditious resolution of cases.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.61, 35.18, 35.54 and 35.55, and also supersedes 1 Pa. Code Chapter 35, Subchapter D.

§ 131.54. Manner and conduct of hearings.

(a) The judge will conduct fair and impartial hearings and maintain order. At the discretion of the judge, the hearings may be conducted by telephone or other electronic means if the parties do not object. Disregard by participants or counsel of record of the rulings of the judge shall be noted on the record, and if the judge deems it appropriate, will be made the subject of a written report to the [Bureau's] Director of Adjudication together with recommendations.

(b) If the participants or counsel are guilty of disrespectful, disorderly or contumacious language or conduct in connection with a hearing, the judge may suspend the hearing or take other action as the judge deems appropriate, including the submission of a written report to the [Bureau's] Director of Adjudication together with recommendations.

* * * * *

§ 131.56. Withdrawal of appearance.

(a) An attorney may withdraw his or her appearance without leave if another attorney has previously entered or is simultaneously entering an appearance on behalf of the party.

(b) Leave to withdraw an appearance shall be sought by written request to the adjudicating judge. An attorney may not withdraw his or her representation until the adjudicating judge grants the request.

(c) In requesting a withdrawal of appearance, the attorney shall:

(1) Verify whether any party has any objection to the withdrawal request.

(2) Serve notice of the request to withdraw on his or her own client, all unrepresented parties and counsel of record for all represented parties.

(3) File a proof of service as provided in § 131.11(d) (relating to filing, service and proof of service).

(d) Except for withdrawals of appearance under subsection (a), the adjudicating judge shall, after conducting a hearing on any objection, or on the adjudicating judge's own motion, issue an Interlocutory Order granting the request unless the adjudicating judge determines that there will be prejudice to the parties or to the proceedings.

(e) Upon withdrawal of appearance, in the event of a fee dispute, the adjudicating judge shall have the authority to determine entitlement to receipt of counsel fees and costs, whether under sections 440 or 442 of the act (77 P. S. §§ 996 and 998), so long as the fee agreement or petition has been filed before discharge and/or withdrawal of counsel.

(f) Subsections (a)-(e) supersede 1 Pa. Code §§ 31.5, 33.32 -- 33.37, 35.1, 35.2, 35.121 -- 35.128, 35.225 and 35.226.

§ 131.57. Compromise and release agreements.

* * * * *

(d) The judge will expedite the convening of a hearing on the compromise and release agreement. The judge will circulate a written decision on the proposed compromise and release agreement within 30 days after the hearing. **The provisions of this subsection (d) shall not apply if a resolution hearing has been requested in accordance with the provisions of § 131.60 (relating to resolution hearings).**

* * * * *

§ 131.59. Alternative dispute resolution.

(a) Mandatory mediation and other forms of alternative dispute resolution may be utilized by the parties under this chapter and shall not be limited in purpose to achieving a compromise settlement (compromise and release agreement), but may have as a goal conventional adjustment of the claim, the narrowing of issues via stipulation for decision by the adjudicating judge or other amicable resolution.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.21-31.23, 33.42, 35.41, 35.48-35.51, 35.111-35.116 and 35.155.

§ 131.59a. Voluntary settlement conferences.

(a) Nothing in this chapter shall preclude the parties from participating in a voluntary settlement conference, subject to 42 Pa. C.S. § 5949 (relating to confidential mediation communications and documents).

(b) If all parties and the adjudicating judge agree, the adjudicating judge may conduct the voluntary settlement conference and may subsequently participate in a decision on the merits of the petition or petitions if they are not resolved amicably.

(c) Subsections (a) -- (b) supersede 1 Pa. Code §§ 31.21 -- 31.23, 33.42, 35.41, 35.48 -- 35.51 and 35.111 -- 35.116 and also supersede 1 Pa. Code Chapter 35, Subchapter E.

§ 131.59b. Mandatory mediation.

(a) A mandatory mediation will not be assigned to an adjudicating judge. Any petition or petitions not resolved by mediation shall proceed before the adjudicating judge as if mediation had not occurred. The mediating judge shall not participate in any decision on the merits of the petition or petitions. This subsection (a) cannot be waived or modified, as otherwise provided in § 131.3 (relating to waiver and modification of rules).

(b) All mandatory mediation activities conducted by mediating judges shall be subject to 42 Pa. C.S. § 5949 (relating to confidential mediation communications and documents) except that:

(1) The definition of “mediation” in section 401 of the act (77 P.S. § 701) shall be applicable.

(2) Communications, conduct or documents are not confidential if relevant to establish that a party or counsel:

(i) Failed to appear for a mediation without prior approval of the mediating judge, or

(ii) Failed to attend a mediation in person or by teleconference, as required by the mediating judge, or

(iii) Failed to have requisite authority to accept, modify or reject settlement proposals offered at the mediation, whether at the mediation, or within a reasonable period of time after the mediation as established by the mediating judge.

(c) The adjudicating judge shall possess authority to impose sanctions for the failure of the parties to comply with the mediation provisions of sections 401 and 401.1 of the act (77 P.S. §§ 701 and 710) and may consider sections 435(b) and 435(d) of the act (77 P.S. §§ 991(b) and 991(d)), as well as circumstances and sanctions set forth in sections 131.13(j) and 131.13(m) (relating to continuances and postponement of hearings).

(d) Nothing in this chapter shall preclude the parties from participating in a voluntary settlement conference, subject to 42 Pa. C.S. § 5949 (relating to confidential mediation communications and documents).

(e) Subsections (a) -- (d) supersede 1 Pa. Code §§ 31.21 -- 31.23, 33.42, 35.41, 35.48 -- 35.51 and 35.111 -- 35.116, and also supersede 1 Pa. Code Chapter 35, Subchapter E.

§ 131.60. Resolution hearings.

(a) A resolution hearing must be requested in writing.

(b) Counsel for either party, or any unrepresented party, may request a resolution hearing at any time after all parties are prepared to proceed within the time limits prescribed by the act and this rule for resolution hearings.

(c) If a petition is pending before a judge, the request for a resolution hearing must be directed to the assigned judge.

(d) If a petition is not pending before a judge, the request for a resolution hearing must be directed to the Judge Manager for the judge's office serving the county of the claimant's residence. If the claimant resides outside of the Commonwealth of Pennsylvania, the request must be directed to the Judge Manager for the judge's office most proximate to the claimant's residence. The Judge Manager will assign a judge to conduct the resolution hearing.

(e) The assigned judge's office shall schedule the resolution hearing within 14 business days of receiving the request for a resolution hearing.

(f) The Judge Manager may reassign any case from one judge to another to ensure compliance with the resolution hearing requirements of sections 401 and 401.1 of the act (77 P.S. §§ 701 and 710). The Judge Manager shall notify both judges of the reassignment.

(g) The judge conducting the resolution hearing shall require proof that a petition has been filed with the Bureau, and shall make the proof a part of the record. Upon receiving the proof, the judge shall proceed with the hearing and shall circulate a final decision within 5 business days of the hearing.

(h) The assigned judge need not comply with the procedures in this rule if any party is unable to proceed within the time limits established by the act for resolution hearings.

(i) Subsections (a)--(h) supersede 1 Pa. Code §§ 31.5, 31.13 -- 31.15, 31.21 -- 31.23, 33.42, 35.41, 35.48 -- 35.51, 35.111 -- 35.116, 35.155, 35.185--35.190, 35.201 -- 35.207, 35.211 -- 35.214, 35.225, 35.226, 35.231 -- 35.233 and 35.241.

* * * * *

§ 131.66. Admissibility of oral depositions.

* * * * *

(b) Objections shall be made and the basis for the objections stated at the time of the taking of the depositions. Only objections which are identified in a separate writing, introduced prior to the close of the evidentiary record, as close of the record is specified in §§ 131.101(c) -- 131.101(e) (relating to briefs, findings of fact and close of record), and stating the specific nature of the objections and the pages where they appear in the deposition **or the exhibits to which they refer** will be preserved for ruling. Objections not so preserved are waived.

* * * * *

§ 131.111. Decisions of judges.

* * * * *

(c) **In any petition which may result in the payment of a monetary award subject to 23 Pa. C.S. § 4308.1 (relating to collection of overdue support from monetary awards), no decision shall be issued until the claimant shall provide to the judge a written statement signed by the claimant and made subject to 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities), including:**

- (1) The claimant's full name, mailing address, date of birth and social security number.**
- (2) Whether there is an outstanding child support order against the claimant, and if so, whether payments are current or in arrears.**
- (3) Written documentation of arrears from the Pennsylvania Child Support Enforcement System website, or, if no arrears exist, written documentation from the website indicating no arrears.**

[(c)] (d) Subsections (a) – [b] (c) supersede 1 Pa. Code §§ 31.13, 31.14, 35.190, 35.201 – 35.207, 35.225, 25.226 and 35.241.



pennsylvania

DEPARTMENT OF LABOR & INDUSTRY

OFFICE OF CHIEF COUNSEL

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT**

TO: Andrew Clark
Deputy General Counsel
Office of General Counsel

FROM: Jane C. Pomerantz 
Chief Counsel

DATE: June 25, 2008

RE: **Proposed Rulemaking No. 12-84**
34 Pa. Code Chapters 111 and 131
Department of Labor and Industry
Workers' Compensation Appeal Board
Workers' Compensation Office of Adjudication

1. **PURPOSE OF REGULATIONS:**

The proposed regulations update the Special Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board (Board) and Special Rules of Administrative Practice and Procedure before the workers' compensation judges (judges) (herein, collectively the Rules). Chapters 111 and 131 have not been revised since 2002, and since that time there have been legislative amendments, various appellate decisions and technological enhancements with respect to the filing of petitions. Updating the Rules is imperative to accurately reflect practices and procedures before the Board, the Office of Adjudication and judges.

2. **STATUTORY AUTHORITY FOR THE REGULATIONS:**

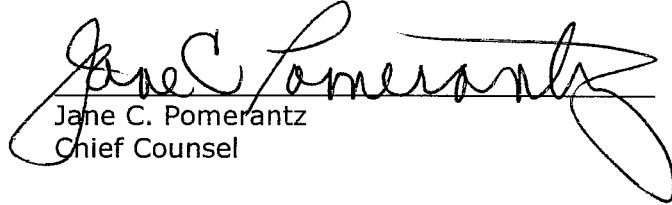
The Department proposes these Rules under the authority contained in sections 401.1 and 435(a) and 435(c) of the Workers' Compensation Act (77 P.S. §§ 710 and 991(a) and (c)), section 2205 of the Administrative Code of 1929 (71 P.S. § 565) and section 414 of the Occupational Disease Act (77 P.S. § 1514).

3. **LEGAL/POLICY ISSUE:**

None.

4. **CERTIFICATION:**

I hereby certify that I have reviewed these regulations for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, that I have made all appropriate revisions and that all information contained in the Preamble and Annex A is current and accurate.



Jane C. Pomerantz
Chief Counsel

JCP/TJK/dh

cc: The Honorable Sandi Vito, Acting Secretary, Labor and Industry
The Honorable Donna Cooper, Secretary, Governor's Office of Planning and Policy
Danielle Guyer, Director, Bureau of Legislative and Regulatory Analysis
Susan McDermott, Chairperson, Workers' Compensation Appeal Board
Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance
Thomas J. Kuzma, Deputy Chief Counsel, Bureau of Workers' Compensation
John T. Kupchinsky, Director, Bureau of Workers' Compensation
Neil P. Malady, Director, Legislative and Public Affairs
Andrea Mead, Director, Office of Policy



DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

THE SECRETARY
1700 LABOR AND INDUSTRY BUILDING
SEVENTH AND FORSTER STREETS
HARRISBURG, PA 17120

717-787-3756

Fax: 717-787-8826

www.dli.state.pa.us

August 26, 2008

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

**Re: Proposed Rulemaking
Labor & Industry
WCAB/WCJ Rules, Document No. 12-84**

Dear Chairman Coccodrilli:

Enclosed is a regulatory package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry for this proposed regulation. This regulation will clarify and expedite the litigation procedures in the workers' compensation system and update existing rules to ensure compliance with amendments to the Workers' Compensation Act and various appellate court decisions. This regulation will amend the Pennsylvania Code (34 Pa. Code, Chapters 111 & 131).

Please feel free to contact Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance (Telephone: 717-787-5082/Fax: 717-787-8826) if you have any questions. The Department's staff will provide your staff with any assistance needed to facilitate a thorough review of this proposal.

Sincerely,

Sandi Vito
Acting Secretary

Enclosures

cc: Jane C. Pomerantz, Chief Counsel
Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance
Neil E. Cashman, Jr., Senior Advisor for External Affairs
Neil Malady, Director of Legislative and Public Affairs

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

I.D. NUMBER: 12-84

SUBJECT: SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE THE WCAB; SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE WORKERS' COMPENSATION JUDGES

AGENCY: DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

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

RECEIVED
2008 AUG 26 AM 11:37
INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/26/08	<i>Gene DiGirolamo</i>	HOUSE COMMITTEE ON LABOR RELATIONS
8/26/08	<i>Robert E. Belfanti, Jr.</i>	MAJORITY CHAIRMAN <u>Robert E. Belfanti, Jr.</u>
8/26/08	<i>John R. Gardner</i>	SENATE COMMITTEE ON LABOR & INDUSTRY
		MAJORITY CHAIRMAN <u>John R. Gardner</u>
8/26/08	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8/26/08	<i>Mayra Garcia</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)
8/26/08	<i>Senator Tartaglione</i>	Senator <u>Tartaglione</u>