

**REPORT OF THE DEPARTMENT OF LABOR AND INDUSTRY
TO THE INDEPENDENT REGULATORY REVIEW COMMISSION**

**FINAL-FORM REGULATION SUBMITTED WITH REVISIONS
REGULATION NO. 12-96 (#2939)
UNEMPLOYMENT COMPENSATION; ACTIVE SEARCH FOR WORK**

Introduction

Act 6 of 2011, enacted on June 17, 2011, amended section 401(b) of the Pennsylvania Unemployment Compensation Law (Law), 43 P.S. § 801(b), to provide that a claimant must make an "active search for suitable employment" in order to be eligible for unemployment compensation (UC) benefits. Section 401(b)(1) directs the Department of Labor and Industry (Department) to establish the requirements for an "active search" which shall include "at a minimum" three specified requirements, one of which is "applying for positions that offer employment and wages similar to those the claimant had prior to his unemployment and which are within a forty-five (45) minute commuting distance." In response to this directive to establish the work search requirements, the Department drafted an amendment to 34 Pa. Code § 65.11 and renamed the regulation "Active Search for Work."

Following a public meeting on December 13, 2012, the Independent Regulatory Review Commission (Commission) disapproved the Department's final-form regulation by Order dated February 15, 2013 (Disapproval Order). The Department has chosen to submit a revised final-form regulation pursuant to section 7(c) of the Regulatory Review Act, 71 P.S. § 745.7(c), and 1 Pa. Code § 311.2(a)(2) in order to respond to the objections expressed by the Commission in its Disapproval Order.

Accordingly, the Department is submitting this report to the Commission in accordance with section 7(c) of the Regulatory Review Act and 1 Pa. Code § 311.4.

Explanation of the Revisions to the Final-Form Regulation

(a) Final-Form Regulation and the Commission's Objections

The Department's final-form regulation established a two-tiered structure for a claimant's weekly work search requirements. For the third week through the eighth week of the benefit year for which a claim for compensation is filed, the final-form regulation required the claimant to apply for at least two positions each week that would provide "suitable" employment under section 4(t) of the Law, 43 P.S. § 753(t). However, it allowed the claimant to limit his applications to positions that would provide employment and wages similar to those the claimant had prior to his unemployment (similar positions) and are within a 45 minute commuting distance. From the ninth week of the benefit year and for

each week thereafter for which a claim for compensation is filed, the final-form regulation required the claimant to apply for at least three positions that provide suitable employment under section 4(t). The claimant could give priority to similar positions within a 45 minute commute, but the claimant would be required to expand the scope of his work search beyond those positions if necessary to apply for at least three positions each week.

In its Disapproval Order, the Commission concluded that the final-form regulation did not meet certain criteria in the Regulatory Review Act: consistency with the statute, reasonableness and conformity with the intent of the General Assembly. Ultimately, the Commission concluded that the final-form regulation was not in the public interest.

The Commission's primary concern was the fact that the final-form regulation may require a claimant to expand his job search beyond similar positions within a 45 minute commute, beginning with the ninth week of the benefit year for which a claim for compensation is filed. Finding that the statute limits the search requirements to similar positions within a 45 minute commute, the Commission stated that the statute does not (1) compel a claimant to go beyond these requirements, (2) state that the work search requirements should change based upon the number of weeks for which a claimant has submitted claims, or (3) contain language allowing the Department to alter the minimum requirements in section 401(b).

An additional concern set forth by the Commission pertains to the absence of a "banking" provision in the final-form regulation. The final-form regulation requires a claimant to apply for at least two (2) similar positions within a 45 minute commute during each week from the third week through the eighth week for which a claim for compensation is filed. If a claimant applies for more than two (2) such positions during any of these weeks, the final-form regulation did not allow the claimant to "bank" the excess applications and apply them to the ninth week and subsequent weeks for which a claim is filed, when the final-form regulation might otherwise have required the claimant to apply for positions that are not similar or involve more than a 45 minute commute. The Commission believes that the absence of a "banking" provision would discourage claimants from applying for positions during the first eight weeks.

(b) Revised Final-Form Regulation in Response to the Commission's Objections

The revised final-form regulation which the Department is submitting to the Commission with this report addresses the objections raised by the Commission in its Disapproval Order.

In response to the Commission's concern that section 401(b)(1) does not state that the work search requirements should change based on the number of weeks for which an individual has claimed compensation, the Department has eliminated the two-tiered structure in the revised final-form regulation. Specifically, the Department has deleted subsections (e)(1) and (2), which created the two-tiered structure, and has replaced them with a new subsection (e)(1) which establishes a one-tiered work search requirement. Instead of increasing the number of job applications per week from two to three at the ninth

week, the new subsection (e)(1) requires only two applications per week for the entire UC claim beginning with the third week for which a claim for compensation is filed.

Consistent with the Commission's view that the statute limits the search requirement to similar positions within a 45 minute commuting distance, the one-tiered work search provision in the revised final-form regulation does not require a claimant to apply for dissimilar positions or positions beyond a 45-minute commuting distance at any time during the benefit year. In addition, the Department has included a definition of "similar positions" in the revised final-form regulation which mirrors section 401(b)(1)(iii) of the Law, i.e., "positions that offer employment and wages similar to those the claimant had prior to his unemployment and which are within a forty-five (45) minute commuting distance."

The revised final-form regulation provides an alternative requirement if a claimant determines that he would be unable to apply for at least two similar positions within a 45 minute commute during a week because, for instance, the claimant has exhausted applications to potential employers offering those positions. For such weeks, the claimant may substitute work search activities for job applications. During the week the claimant may apply for one similar position within a 45 minute commute and engage in one work search activity, or engage in two work search activities. A claimant is not required to expand his search to "suitable work" under section 4(t) of the Law if he does not desire to do so. If a claimant engages in a work search activity in lieu of a job application, the claimant must still engage in a work search activity under subsection (e)(3).

However, there may be claimants who would not want to limit their job applications to similar positions, such as a claimant who desires a career change or a claimant who is willing to accept a lower salary in order to be reemployed sooner. For that reason, subsection (e)(1)(ii) states that a claimant *may* apply for positions that would provide "suitable work" under section 4(t) of the Law.

Under the final-form regulation, if a claimant makes more than the required number of applications for similar positions during the third week through the eighth week for which compensation is claimed, there is no provision allowing the claimant to bank those excess applications and apply them to the ninth week and subsequent weeks, when the claimant might otherwise be required to expand his job search to include positions offering "suitable work" or positions requiring more than a 45 minute commute. The revised final-form regulation eliminates the basis for the Commission's concern about the absence of a banking provision. Under the one-tiered work search provision in the revised final-form regulation, a claimant will not be required to expand his job applications beyond similar positions within a 45 minute commute at any time during the UC claim. If the claimant determines that he would be unable to apply for at least two such positions during a week, he may engage in a work search activity in lieu of an application for a position. If the claimant makes such a determination, he may also apply for positions providing suitable work, but such an expansion of his work search scope is no longer required as it was under the final-form regulation. Rather, if the claimant chooses not to expand his search, he may substitute a weekly work search activity for a job application. Because this option exists, there is no longer a need to bank excess job applications.

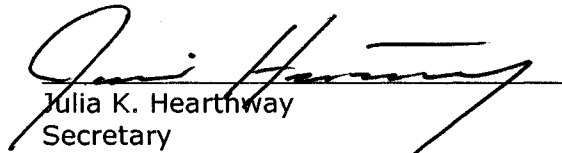
Moreover, it is important to note that a "banking" provision would be difficult to administer. If the Department is reviewing a claimant's compliance with the work search requirements for a given week, and the claimant's work search record indicates that he applied one or more "banked" applications to that week, the Department would be required to ask the claimant to submit his work search records for all prior weeks to verify that the banked applications were made. This expanded review process would be burdensome for both claimants and the Department.

Conclusion

Upon review of the concerns raised in the Commission's Disapproval Order, the Department has amended the final-form regulation to address all of these concerns. The revised final-form regulation is consistent with section 401(b) of the Law, the intent of the General Assembly, and is reasonable. Therefore, the Department respectfully requests that the Commission find the revised final-form regulation to be in the public interest and to approve the revised final-form regulation.

As required by 1 Pa. Code § 311.4, the revised final-form regulation, the Commission's Disapproval Order, and a signed transmittal sheet are attached to this Report

Date: March 26, 2013



Julia K. Hearthway
Secretary
Commonwealth of Pennsylvania
Department of Labor and Industry
651 Boas Street
Harrisburg, PA 17121

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held December 13, 2012

Silvan B. Lutkewitte, III, Chairman, dissenting
George D. Bedwick, Vice Chairman
John F. Mizner, Esq.
Lawrence J. Tabas, Esq., dissenting
Dennis A. Watson, Esq.

Order Issued February 15, 2013
Regulation No. 12-96 (#2939)
Department of Labor and Industry
Unemployment Compensation; Active
Search for Work

On April 19, 2012, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Labor and Industry (Department). This rulemaking amends 34 Pa. Code § 65.11. The proposed regulation was published in the May 5, 2012 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on November 5, 2012.

This final-form regulation implements portions of Act 6 of 2011 (Act). In accordance with the Act, this regulation establishes the specific search criteria necessary for unemployment compensation claimants (claimants) to conduct an active search for suitable employment.

In its development of the final-form regulation, we recognize that the Department made a considerable effort to respond to issues raised at the proposed stage. However, we find that this final-form regulation is not in the public interest. As explained further below, we find that the final-form regulation does not meet the criteria in the Regulatory Review Act of consistency with the statute and reasonableness. In addition, because the regulation is inconsistent with the statute, it does not appear to be aligned with the intent of the General Assembly when it passed the Act. 71 P.S. §§ 745.5b(a), (b)(3)(i) and (b)(3)(iv).

Section 401(b)(1) of the Act requires claimants to make an “active search for suitable employment” in order to maintain eligibility for unemployment compensation. Section 401(b)(1) requires the Department to establish search requirements that *shall* include, *at a minimum, all* of the following (emphasis added):

- (i) Registration by a claimant for employment search services offered by the Pennsylvania CareerLink system or its successor agency within thirty (30) days after initial application for benefits.
- (ii) Posting a resume on the system’s database, unless the claimant is seeking work in an employment sector in which resumes are not commonly used.
- (iii) Applying for positions that offer employment and wages similar to those the claimant had prior to his unemployment and which are within a forty-five (45) minute commuting distance.

The regulation implements these provisions through a two-tiered search requirement, where the type of search performed is based upon the number of weeks for which a claim for compensation is filed. Specifically, Section 65.11(e) of the regulation requires the following:

(1) During each week from the third week of the benefit year for which a claim for compensation is filed through the eighth week of the benefit year for which a claim for compensation is filed, the claimant shall apply for employment as follows:

- (i) Except as provided in subparagraph (ii), the claimant shall apply for at least two positions that would provide suitable employment under section 4(t) of the law (43 P.S. § 753(t)).
- (ii) The claimant may limit his applications to positions that would provide employment and wages similar to those the claimant had prior to his unemployment and are within a 45 minute commuting distance. (Section 401(b)(1)(iii) of the law, 43 P.S. § 801(b)(1)(iii)).

(2) During the ninth week of the benefit year for which a claim for compensation is filed and each week thereafter for which a claim for compensation is filed, the claimant shall apply for employment as follows:

- (i) The claimant shall apply for at least three positions that would provide suitable employment under section 4(t) of the law (43 P.S. § 753(t)).
- (ii) The claimant may prioritize the types of positions for which he will apply in the following order:

(1) Positions described in paragraph (1)(ii).

(2) Other positions, to the extent that expanding the scope of the positions for which he will apply beyond the positions described in paragraph (1)(ii) is necessary in order to apply for at least three positions each week.

It is the Department's position that the phrase "at a minimum" in the Act, authorizes the Department to expand the job search requirements during and after the ninth week to positions that are beyond a 45-minute commuting distance and positions that do not provide employment and wages similar to those the claimant had prior to his/her unemployment. The Department further explains that the requirement for claimants to search for positions outside the statutory requirements would not expand the scope of suitable employment. We disagree.

The Act does not specify the number of applications a claimant must file in order to conduct an active search for suitable employment; however, it does limit the search requirement to similar employment and wages within a certain commuting distance. While a claimant can certainly choose to go beyond these requirements, the Act does not compel the claimant to do so. To instruct otherwise would seem to render Section 401(b)(1)(iii) of the Act obsolete and result in an inconsistent application of the Act.

Additionally, the Department's interpretation appears to be inconsistent with the intent of the General Assembly when it implemented the Act. The statute does not state that the minimum requirements should change based upon the number of weeks during which a claimant submits claims for compensation. Section 401(b)(1) sets forth what the minimum active search "shall" include and does not contain language that would allow the Department to alter these minimum requirements. Consequently, we find that work search requirements in the final-form regulation are not consistent with the legislative intent of the Act.

Additionally, in our comments on Section 65.11(e)(2) of the proposed rulemaking (this subsection was designated as (d)(2) in the proposed version of the regulation), we questioned the ability of claimants to accrue and "bank" searches conducted in excess of the minimum two applications required per week during weeks three through eight. Specifically, our comments stated:

... Should a claimant exhaust all potential employment options for similar work prior to the ninth week, this subsection does not provide credit to claimants for these past searches. If claimants cannot apply prior searches to comply with this subsection, are they unfairly penalized for their efforts to find jobs within their field?

The Department responded that claimants are not unfairly penalized and that "despite the aggressiveness of a claimant's prior work search efforts, or the fact that a job application is pending, nonetheless the claimant is still unemployed and the requirement to continue to search for work is appropriate." We disagree and contend that the prohibition on "banking" applications is not reasonable as it will discourage claimants from applying for positions in the first eight weeks.

As discussed above, we have determined that the work search requirements in this regulation are not consistent with the statute and the intention of the General Assembly. Additionally, we find the prohibition on "banking" job applications to be unreasonable. Therefore, we find that the promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

The regulation # 12-96 (IRRC # 2939) from the Department of

Labor and Industry

was disapproved on December 13, 2012.



A handwritten signature in cursive script, reading "Silvan B. Lutkewitte, III", is written over a horizontal line.

Silvan B. Lutkewitte, III, Chairman

Annex A
TITLE 34. LABOR AND INDUSTRY
PART II, SUBPART A. UNEMPLOYMENT COMPENSATION
CHAPTER 65. EMPLOYEE PROVISIONS
SUBCHAPTER B. PREREQUISITES FOR ELIGIBILITY
[Registration] Active Search for Work

§ 65.11. [Work registration; effective period] Active search for work.

(a) [A claimant who files an application for benefits in accordance with § 65.41 (relating to filing methods) and declares his availability for suitable work has registered for work for purposes of section 401(b) of the law (43 P. S. § 801(b)). The work registration is effective on the date that the application is effective in accordance with § 65.42 (relating to application for benefits—effective date) or § 65.43a (relating to extended filing) and remains in effect for the benefit year corresponding to the application and any subsequent period for which benefits are payable pursuant to the application.] DEFINITIONS. FOR PURPOSES OF THIS SECTION AND SECTION 401(B) OF THE LAW (43 P.S. § 801(B)) THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANING INDICATED BELOW:

(1) "EMPLOYMENT SERVICE" MEANS THE STATE EMPLOYMENT SERVICE ESTABLISHED UNDER 20 CFR PART 652.

(2) "PENNSYLVANIA CAREERLINK® SYSTEM" MEANS THE SYSTEM OF OFFICES, PERSONNEL AND RESOURCES, INCLUDING THE COMMONWEALTH WORKFORCE DEVELOPMENT SYSTEM OR SUCCESSOR ELECTRONIC RESOURCES, THROUGH WHICH THE DEPARTMENT PROVIDES SERVICES UNDER THE WAGNER-PEYSER ACT, 29 U.S.C. § 49 ET SEQ., THE WORKFORCE INVESTMENT ACT OF 1998, 29 U.S.C. § 2801 ET SEQ., OR SIMILAR OR SUCCESSOR STATUTES.

(3) "REGISTER FOR EMPLOYMENT SEARCH SERVICES" MEANS PROVIDE INFORMATION REGARDING EDUCATION, WORK HISTORY AND QUALIFICATIONS AND ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT THAT IS RELEVANT TO RECEIPT OF EMPLOYMENT SEARCH SERVICES.

(4) "SIMILAR POSITIONS" MEANS POSITIONS THAT OFFER EMPLOYMENT AND WAGES SIMILAR TO THOSE THE CLAIMANT HAD PRIOR TO HIS UNEMPLOYMENT AND WHICH ARE WITHIN A FORTY-FIVE (45) MINUTE COMMUTING DISTANCE.

(b)} Initial procedures. When a claimant files an application for benefits in accordance with § 65.41, the department will DO THE FOLLOWING:

- (1) provide [information relevant to the claimant's reemployment and receipt of employment services to the employment office] ~~information~~ INSTRUCTIONS to the claimant regarding the process to register for employment search services and post a resume in the Pennsylvania CareerLink® system,
- (2) ~~and~~ advise the claimant of services provided by the department and the Pennsylvania CareerLink® system, AND

(3) PROVIDE A COPY OF THE RECOMMENDED WORK SEARCH RECORD FORM TO THE CLAIMANT AND ADVISE THE CLAIMANT THAT THE FORM IS AVAILABLE ON THE DEPARTMENT'S INTERNET WEBSITE.

(b C) Work registration. A claimant shall register for employment search services in the Pennsylvania CareerLink® system within thirty (30) days after the claimant files his application for benefits. (SECTION 401(B)(1)(i) OF THE LAW, 43 P.S. §801(B)(1)(I)). If a claimant does not register for employment search services in the Pennsylvania CareerLink® system within thirty (30) days after the claimant files his application for benefits the claimant shall be ineligible for compensation for any week that ends more than thirty (30) days after the claimant files his application for benefits unless the claimant has registered no later than Sunday of that week.

(e D) Weekly requirements. In order to be eligible for compensation for the third consecutive week of the benefit year FOR WHICH A CLAIM FOR COMPENSATION IS FILED and each week thereafter FOR WHICH A CLAIM FOR COMPENSATION IS FILED a claimant shall:

(1) engage in work search activities during the week in accordance with subsections (d E) and (e F),

(2) COMPLETE THE RECOMMENDED WORK SEARCH RECORD FORM FOR THE WEEK OR create a record of his work search activities during the week THAT CONTAINS THE SAME INFORMATION THAT WOULD BE REQUIRED TO COMPLETE THE RECOMMENDED FORM , containing all information required by the department,

(3) retain the record for a period of two years from the effective date of the application for benefits, and

(4) produce the record for the department's review at such times and in such format and manner as required by the department.

(d E) Weekly work search activities

~~(1) During each week from the third consecutive week of the benefit year FOR WHICH A CLAIM FOR COMPENSATION IS FILED through the eighth consecutive week of the benefit year FOR WHICH A CLAIM FOR COMPENSATION IS FILED, the claimant shall apply for employment as follows:~~

~~(i) Except as provided in subparagraph (ii), the claimant shall apply for at least two positions THAT WOULD PROVIDE SUITABLE EMPLOYMENT UNDER SECTION 4(T) OF THE LAW (43 P.S. § 753(T)).~~

~~(ii) The claimant may limit his applications to positions that would provide employment and wages similar to those the claimant had prior to his unemployment and are within a 45 minute commuting distance or a commuting distance that is generally accepted in the claimant's labor market, whichever is greater. (SECTION 401(B)(1)(III) OF THE LAW, 43 P.S. § 801(B)(1)(III)).~~

(1) A CLAIMANT SHALL APPLY FOR AT LEAST TWO POSITIONS DURING THE WEEK AS FOLLOWS:

(i) THE CLAIMANT MAY LIMIT HIS APPLICATIONS TO SIMILAR POSITIONS. (SECTION 401(B)(1)(III) OF THE LAW, 43 P.S. § 801(B)(1)(III)).

(A) IF A CLAIMANT CHOOSES TO LIMIT HIS APPLICATIONS TO SIMILAR POSITIONS AND AS A RESULT OF THAT LIMITATION THE CLAIMANT DETERMINES THAT HE WOULD BE UNABLE TO APPLY FOR AT LEAST TWO POSITIONS DURING THE WEEK, THE CLAIMANT SHALL DO ONE OF THE FOLLOWING OR A COMBINATION THEREOF:

(I) THE CLAIMANT SHALL APPLY FOR POSITIONS THAT WOULD PROVIDE SUITABLE WORK UNDER SECTION 4(T) OF THE LAW (43 P.S. § 753(T)) IN ORDER TO APPLY FOR AT LEAST TWO POSITIONS DURING THE WEEK.

(II) THE CLAIMANT SHALL ENGAGE IN A WORK SEARCH ACTIVITY LISTED IN PARAGRAPH (3) IN LIEU OF AN APPLICATION FOR A POSITION, SUCH THAT THE COMBINED NUMBER OF APPLICATIONS AND WORK SEARCH ACTIVITIES DURING THE WEEK IS AT LEAST TWO, DETERMINED BEFORE THE APPLICATION OF PARAGRAPH (3).

(ii) THE CLAIMANT MAY APPLY FOR POSITIONS THAT WOULD PROVIDE SUITABLE WORK UNDER SECTION 4(T) OF THE LAW.

~~(2) During the ninth consecutive week of the benefit year FOR WHICH A CLAIM FOR COMPENSATION IS FILED and each week thereafter FOR WHICH A CLAIM FOR COMPENSATION IS FILED, the claimant shall apply for employment as follows:~~

~~(i) The claimant shall apply for at least three positions that would provide suitable employment under section 4(t) of the law (43 P.S. § 753(T)).~~

~~(ii) The claimant may not limit his applications to positions described in paragraph (1)(ii) if doing so would result in an insufficient number of applications during the week. PRIORTIZE THE TYPES OF POSITIONS FOR WHICH HE WILL APPLY IN THE FOLLOWING ORDER:~~

~~(1) POSITIONS DESCRIBED IN PARAGRAPH (1)(II).~~

~~(2) OTHER POSITIONS, TO THE EXTENT THAT EXPANDING THE SCOPE OF THE POSITIONS FOR WHICH HE WILL APPLY BEYOND THE POSITIONS DESCRIBED IN PARAGRAPH (1)(II) IS NECESSARY IN ORDER TO APPLY FOR AT LEAST THREE POSITIONS EACH WEEK.~~

(32) (i) For purposes of paragraphs (1) ~~and (2)~~, a claimant may apply for a position by expressing an interest in employment to the employer in person, or by mail, phone or electronic transmission, by submitting a job application or resume to the employer, or by following a hiring procedure established by the employer.

(ii) A repeated application for the same position will not satisfy the requirements of paragraphs (1) ~~and (2)~~ unless there is a reasonable basis to believe that the employer's hiring circumstances have changed.

(43) In addition to the requirements of paragraphs (1) ~~and (2)~~, the claimant shall do at least one of the following during the week:

(i) attend a job fair.

(ii) search positions posted on the Pennsylvania CareerLink® system or internet job banks.

(iii) post a resume in the Pennsylvania CareerLink® system or other resume posting service.

(iv) contact colleagues, former co-workers or other individuals in similar professions or occupations, to make known the claimant's availability for employment or obtain information about available positions, prospective employers or other employment opportunities.

(v) utilize an employment agency, employment registry or school placement service.

(vi) take a civil service test or other pre employment test.

(vii) participate in a program or activity offered through the Pennsylvania CareerLink® system.

(54) If a claimant applies for more than the minimum number of positions under paragraph (1) ~~or (2)~~, the additional application may substitute for a work search activity under paragraph (43).

(e F) Alternative requirements AND WAIVER.

(1) No work search activities under subsection (d E) shall be required for a week if any of the following apply:

(i) The claimant –

(A) is a member of a union that has a hiring hall or the claimant is registered with a hiring hall,

(B) is required to obtain employment through the hiring hall, and

(C) fulfills all requirements to maintain eligibility for referral by the hiring hall during the week.

(ii) The claimant actively participates during the week in a program or activity approved by the department as an acceptable work search alternative.

(2) If a claimant works part time during a week and earns in excess of the claimant's partial benefit credit as defined in section 4(m.3) of the law (43 P.S. § 753(M.3), the following shall apply:

(i) The claimant will satisfy the requirements of subsection (d E)(1) by applying for one position during the week ~~and subsection (d E)(2) by applying for two positions during the week.~~

(ii) the claimant will not be required to satisfy the requirementS of subsection (d E)(43) during the week.

(3) IF A CLAIMANT IS INTERVIEWED FOR A POSITION BY AN EMPLOYER OR AN EMPLOYER REPRESENTATIVE, THE INTERVIEW MAY SUBSTITUTE FOR AN APPLICATION FOR A POSITION FOR PURPOSES OF SUBSECTION (E)(1) ~~AND (2)~~ OR MAY SUBSTITUTE FOR A WORK SEARCH ACTIVITY FOR PURPOSES OF SUBSECTION (E)(43) FOR THE WEEK IN WHICH THE INTERVIEW OCCURS.

(3 4) For purposes of subsection (b C), if a claimant's labor market is located outside of Pennsylvania the claimant shall register for employment search services with the employment service that serves the claimant's labor market in addition to registering with the Pennsylvania CareerLink® system.

(4 5) Notwithstanding any other provision of this section, the department may determine that a claimant has satisfied the requirements of section 401(b) of the law if the claimant's work search efforts include actions comparable to traditional actions in the claimant's trade or occupation by which jobs have been found by others in the community and labor market in which the claimant is seeking employment. (SECTION 401(B)(3) OF THE LAW, 43 P.S. § 801(B)(3)).

(6) THE DEPARTMENT MAY WAIVE OR ALTER THE REQUIREMENTS OF THIS SECTION OR SECTION 401(B) OF THE LAW (43 P.S. § 801(B)) IN CASES OR SITUATIONS WITH RESPECT TO WHICH THE SECRETARY FINDS THAT COMPLIANCE WITH SUCH REQUIREMENTS WOULD BE OPPRESSIVE OR WHICH WOULD BE INCONSISTENT WITH THE PURPOSES OF THE LAW. (SECTION 401(B)(6) OF THE LAW, 43 P.S. § 801(B)(6)).

(I) A CLAIMANT MAY SUBMIT A REQUEST TO THE DEPARTMENT TO WAIVE OR ALTER THE REQUIREMENTS OF THIS SECTION OR SECTION 401(B) OF THE LAW. THE CLAIMANT MAY COMPLETE AND SUBMIT THE RECOMMENDED WAIVER REQUEST FORM AVAILABLE ON THE DEPARTMENT'S INTERNET WEBSITE, OR SUBMIT A WRITTEN REQUEST THAT CONTAINS THE SAME INFORMATION THAT WOULD BE REQUIRED TO COMPLETE THE RECOMMENDED FORM.

(f G) Applicability.

(1) This section does not apply as provided in section 401(b)(4) and (5) of the law (43 P.S. § 801(B)(4) AND (5)) or to any week in which a claimant is in training with

the approval of the Secretary or any week in which a claimant is participating in a work sharing plan under Article XIII of the law (43 P.S. § 916.1 ET SEQ.).

(2) For purposes of section 401(b)(5) of the law (43 P.S. § 801(B)(5):

(i) A claimant is advised by the employer of the date on which he will return to work only if both of the following conditions are satisfied:

(A) The employer designates a specific recall date and notifies the claimant of the recall date in writing.

(B) The employer's designation of a recall date is bona fide.

(ii) Section 401(b)(5) of the law (43 P.S. § 801(B)(5)) shall not apply to any week following the week in which any of the following occur:

(A) The designated recall date is rescinded by the employer or is rescinded in fact.

(B) The designated recall date has passed.

(3) THE REQUIREMENT IN SECTION 401(B)(1)(II) OF THE LAW (43 P.S. § 801(B)(1)(II)) DOES NOT APPLY TO A CLAIMANT WHO IS SEEKING WORK IN AN EMPLOYMENT SECTOR IN WHICH RESUMES ARE NOT COMMONLY USED.

(g H) Extended benefits. For purposes of extended benefits under Article IV-A of the law (43 P.S. § 811 ET SEQ.), if the eligibility requirements for extended benefits include work search requirements in addition to the requirements of section 401(b) of the law (43 P.S. § 801(B)) and this section, the claimant also shall satisfy the additional work search requirements applicable to extended benefits.

(h) Definitions. For purposes of this section and section 401(b) of the law, the following words and phrases shall have the meaning indicated below:

(1) "Employment service" means the state employment service established under 20 CFR Part 652.

(2) "Pennsylvania CareerLink® system" means the system of offices, personnel and resources, including the Commonwealth Workforce Development System or successor electronic resources, through which the department provides services under the Wagner Peyser Act, 29 U.S.C. § 49 et seq., and the Workforce Investment Act of 1998, 29 U.S.C. § 2801 et seq., or similar or successor statutes.

(3) "Register for employment search services" means provide information regarding education, work history and qualifications and any other information required by the department that is relevant to receipt of employment search services.



COMMONWEALTH OF PENNSYLVANIA

March 26, 2013

The Honorable Silvan B. Lutkewitte, III
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

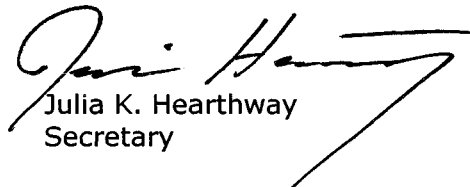
**Re: Revised Final-Form Rulemaking
Title 34 Labor & Industry
Part II, Subpart A. Unemployment Compensation
Chapter 65. Employee Provisions
Document No. 12-96**

Dear Chairman Lutkewitte:

Enclosed is a revised final-form rulemaking consisting of a report to the Independent Regulatory Review Commission (Commission), the text of the revised final-form regulation and a copy of the Commission's disapproval order. This revised rulemaking responds to the objections raised by the Commission in its disapproval order.

Questions should be directed to Sean F. Creegan, Deputy Chief Counsel, 10th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; Telephone: 717-787-4186; Fax: 717-787-1303; E-mail: screegan@state.pa.us.

Sincerely,



Julia K. Hearthway
Secretary

cc w/ encl: Arthur McNulty, Chief Counsel
Gregg D. Shore, Deputy Secretary for Unemployment Compensation Programs
David G. Greineder, Director, Legislative Affairs
Gwenn A. Dando, Director, Office of Policy, Planning and Development
Sean F. Creegan, Deputy Chief Counsel

OFFICE OF THE SECRETARY | Department of Labor & Industry | 651 Boas Street |
Room 1700 | Harrisburg, PA 17121 | 717.787.3756 | www.dli.state.pa.us

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*

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

I.D. NUMBER: 12-96

SUBJECT: 34 Pa. Code, Part II, Subpart A., Unemployment Compensation
Chapter 65, Employee Provisions

AGENCY: DEPARTMENT OF LABOR AND INDUSTRY

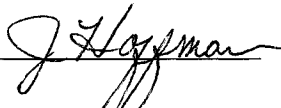
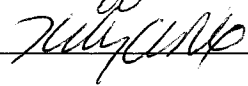

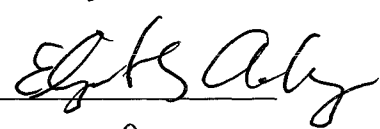

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation (Resubmitted with Revisions)
- 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

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RECEIVED
IRRC

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON LABOR & INDUSTRY
3/26/13		MAJORITY CHAIRMAN <u>Mario M. Scavello</u>
3-26-13		MINORITY CHAIRMAN <u>William F. Keller</u>
		SENATE COMMITTEE ON LABOR & INDUSTRY
3/26/13		MAJORITY CHAIRMAN <u>John R. Gordner</u>
3/26/13		MINORITY CHAIRMAN <u>Christine M. Tartaglione</u>
3/26/13		
		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU