

Regulatory Analysis Form		INDEPENDENT REGULATORY REVIEW COMMISSION
(1) Agency Unemployment Compensation Board of Review Department of Labor & Industry		2013 SEP 30 PM 3:16 IRRC
(2) Agency Number: Identification Number: 12-97		
(3) PA Code Cite: 34 Pa. Code § 101.128(a)		IRRC Number: 3031
(4) Short Title:		
(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Teresa H. DeLeo, (717) 4186, tdeleo@pa.gov Secondary Contact: Gerard Mackarevich, (717) 787-4186, gmackarevi@pa.gov		
(6) Type of Rulemaking (check applicable box): <input type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input checked="" type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)		
<p>The regulations of the Unemployment Compensation Board of Review (Board) at 34 Pa. Code § 101.128(a) currently provide that an unemployment compensation (UC) referee may schedule a telephone hearing when a witness is located at least 50 miles from the hearing location without request from any party. The statutory rescission of the 50 mile distance requirement removed a limitation placed on parties for telephone hearings. This final omitted rulemaking will rescind the sentence in the current regulation that references this now-obsolete reference to distance.</p>		

(8) State the statutory authority for the regulation. Include specific statutory citation.

The rescission of language is adopted under the authority provided in Section 201(a) and 203(d) and of the Unemployment Compensation Law (UC Law)(43 P.S. §§ 761(a) and 763(d)) and Section 2205 of the Administrative Code of 1929 (71 P.S. § 565).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The current regulatory language was superseded by Act 6 of 2011 (S.B. 1030); 2011, June 17, P.L. 16 amending section 505 of the UC Law. (43 P.S. § 825)

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This rulemaking is designed to bring the regulation on telephone hearings into conformity with a 2011 amendment to the UC Law, which superseded the regulatory language in question. The UC appeals system already is conforming to the statutory change. Therefore, enactment of this final omitted rulemaking will result in no operational change. Parties involved in unemployment hearings have already benefitted from the statutory change that has eliminated the distance requirement for telephone hearings.

(11) 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 regulations.

Not applicable.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Not applicable.

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

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Not applicable.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Not applicable, as this is simply a rescission of regulatory language that has been superseded by statute.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Not applicable, as this is simply a rescission of regulatory language that has been superseded by statute.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Not applicable. The statutory amendment has superseded the regulatory language.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Not applicable.

(19) 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. Explain how the dollar estimates were derived.

Not applicable.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Not applicable.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Not applicable.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Not applicable, as this is simply a rescission of regulatory language that has been superseded by statute.

(23) 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	N/A					
Local Government	N/A					
State Government	N/A					
Total Savings	N/A					
COSTS:	N/A					
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Costs	N/A					
REVENUE LOSSES:	N/A					
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Revenue Losses	N/A					

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Not applicable. The regulatory language has been superseded by statute.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Not applicable. The statutory amendment has superseded the regulatory language. The UC appeals system already is conforming to the statutory change. Therefore, enactment of this final omitted rulemaking will have no effect.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Not applicable. The statutory amendment has superseded the regulatory language.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Not applicable. The statutory amendment has superseded the regulatory language.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

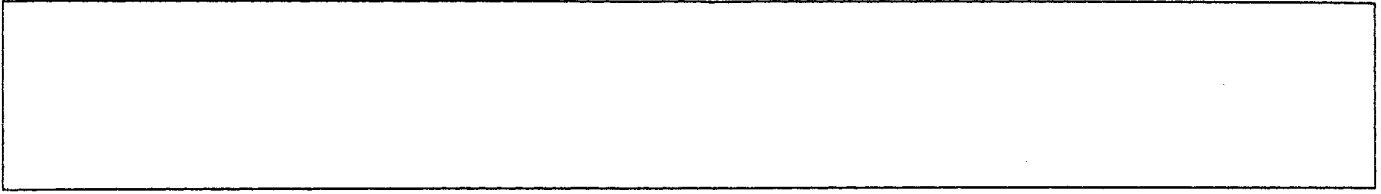
Not applicable.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: _____
- B. The date or dates on which public meetings or hearings will be held: _____
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: _____
- D. The expected effective date of the final-form regulation: _____
- E. The date by which compliance with the final-form regulation will be required: _____
- F. The date by which required permits, licenses or other approvals must be obtained: _____

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Not applicable. The statutory amendment has superseded the regulatory language.



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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

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

By _____
(Deputy Attorney General)

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. 12-97

DATE OF ADOPTION: _____

BY: _____

Julia K. Hearthway

TITLE: Secretary of Labor & Industry
(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

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

BY: _____
Shawn E. Smith

SEP 10 2013

DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)
(~~CHIEF COUNSEL, INDEPENDENT AGENCY~~)
(STRIKE INAPPLICABLE TITLE)

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

FINAL OMITTED REGULATION

PART VI. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW
34 PA. CODE CHAPTER 101. GENERAL REQUIREMENTS
SUBCHAPTER E. TELEPHONE HEARINGS
SECTION 101.128
[34 Pa. Code § 101.128]

FINAL OMITTED REGULATION

PART VI. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW

34 PA. CODE CHAPTER 101. GENERAL PROVISIONS

SUBCHAPTER E. TELEPHONE HEARINGS

SECTION 101.128

[34 Pa. Code § 101.128]

The Department of Labor and Industry (Department) rescinds language in a regulation of the Unemployment Compensation Board of Review (Board), at 34 Pa. Code § 101.128(a), to read as set forth in Annex A. This final-omitted rulemaking is adopted under authority of Sections 203(d) and 505 of the Unemployment Compensation Law (UC Law) (43 P.S. §§ 763(d) and 825).

Notice of proposed rulemaking is omitted in accordance with Section 204(1)(iii) of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. § 1204(1)(iii)), known as the Commonwealth Documents Law (CDL). The proposed rulemaking procedures are unnecessary because the Board is rescinding regulatory language to conform to a 2011 amendment of the UC Law.

Purpose of Regulations

This subchapter provides standards and procedures for unemployment compensation referees to schedule telephone testimony by a party or witness.

Purpose of Final-Omitted Rulemaking

The purpose of the rulemaking is to rescind a portion of 34 Pa. Code 101.128(a) that conflicts with a recent statutory amendment. The regulatory language to be rescinded was superseded by Section 505 of the UC Law (43 P.S. § 825), as amended by Act 2011-6 (S.B. 1030), P.L. 16, § 7, approved June 17, 2011, eff. in 60 days.

Affected Parties

The unemployment compensation administrative authorities already have adapted hearing procedures to conform with the 2011 statutory amendment. Therefore, the rescission of the superseded regulatory language will not affect any person or entity involved or to be involved in an unemployment compensation appeal proceeding.

Fiscal Impact

Implementation of this final-omitted rulemaking will not result in the expenditure of additional funds by the Board or by parties to an unemployment compensation appeal proceeding.

Sunset Provisions

The Department is not establishing a sunset date for this final-omitted rulemaking, because it is occasioned by a recent amendment of the UC Law that will control until any further legislative change.

Contact Person

The contact person for this final-omitted rulemaking is Teresa H. DeLeo, Assistant Counsel, Office of Chief Counsel, 10th floor, Labor & Industry Building, 651 Boas St., Harrisburg, PA 17121, (717) 787-4186, tdeleo@pa.gov.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on ~~September 30~~ 2013 the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Labor Relations Committee and Senate Labor and Industry Committee. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101-732-506). A copy of the Regulatory Analysis Form is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2013 the final-omitted rulemaking was (deemed) approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2013 and approved the final-omitted rulemaking.

Findings

The Department finds that:

(1) The proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because this final-omitted rulemaking rescinds superseded language in the Board regulation at 34 Pa. Code § 101.128(a).

(2) There is good cause to forego public notice of the intention to rescind superseded

language in 34 Pa. Code § 101.128(a), because the change relates to agency procedure or practice under section 204 of the CDL (45 P.S. § 1204(1)(iii)).

(3) Public comment cannot change the fact that the regulatory language is statutorily superseded.

Order

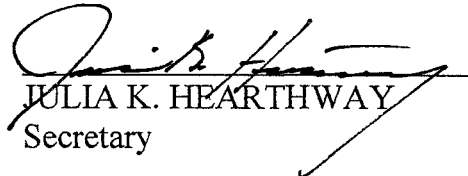
The Department orders that:

(a) The regulations of the Board, 34 Pa. Code Chapter 101, are amended by rescinding statutorily superseded language in § 101.128(a), as set forth in Annex A.

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

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

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.


JULIA K. HEARTHWAY
Secretary

Annex A

TITLE 34. LABOR AND INDUSTRY

**PART VI. UNEMPLOYMENT COMPENSATION BOARD OF
REVIEW**

CHAPTER 101. GENERAL REQUIREMENTS

SUBCHAPTER E. TELEPHONE HEARINGS

34 Pa. Code § 101.128 (2013)

§ 101.128. Scheduling of telephone testimony

(a) The tribunal may schedule, on its own motion, testimony by telephone of a party or witness. ~~when it appears from the record that the party or witness is located at least 50 miles from the location at which the tribunal will conduct the hearing, without regard to State boundaries.~~

(b) The tribunal may schedule testimony by telephone of a party or witness, at the request of one or more parties, when one of the following applies:

(1) The parties consent to the receipt of testimony by telephone.

(2) The party or witness is reasonably unable to testify in person due to a compelling employment, transportation, or health reason, or other compelling problem.

(c) Only a party or witness scheduled to testify by telephone, or identified prior to the taking of testimony in accordance with § 101.131(f) (relating to conduct of a telephone hearing), may testify by telephone, and the testimony of each other party or witness shall be received in person.

(d) The tribunal will promptly rule on a request that testimony be taken by telephone after a reasonable attempt has been made to inform the parties of the request, the basis for the request, the regulations under which telephone testimony can be taken, and the right of a party to object. The basis for the request, the position of the parties, if known, and the ruling will be documented on the record.

(e) A party or witness scheduled to testify by telephone will be permitted to testify in person.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
HARRISBURG, PENNSYLVANIA 17120

THE SECRETARY

September 30, 2013

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

**Re: Final Omitted Regulation
Department of Labor and Industry-
Unemployment Comp. Bd of Review
Telephone Hearings
No. 12-97**

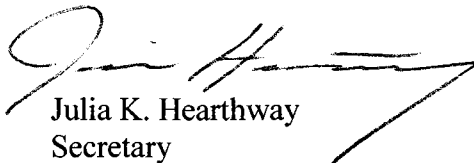
Dear Chairman Lutkewitte:

Enclosed is a final-omitted rulemaking package consisting of a face sheet, preamble, annex A and regulatory analysis form. The Department of Labor and Industry is submitting this rulemaking to rescind a sentence fragment in 34 Pa. Code §101.128(a) that conflicts with a 2011 statutory amendment.

Comments, suggestions or questions should be directed to Teresa DeLeo, Assistant Counsel, 10th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; Telephone: (717)787-4186; Fax: (717) 783-5027. The email address is: tdeleo@pa.gov.

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

Sincerely,



Julia K. Hearthway
Secretary

cc w/encl:

Arthur F. McNulty, Chief Counsel
David Greineder, Director of Legislative Affairs
Eileen B. Melvin, UCBR Chairman
Randall Brandes, UC Appeals System Administrator
Karen Galli, Deputy Chief Counsel
Gerard Mackarevich, Deputy Chief Counsel
Teresa Heacock DeLeo, Assistant Counsel
Gwen Dando, Executive Policy Specialist

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

I.D. NUMBER: 12-97

SUBJECT: Unemployment Compensation Board of Review - Telephone Hearings

AGENCY: DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

Proposed Regulation

Final Regulation

X 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

2013 SEP 30 PM 3:16

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FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON LABOR & INDUSTRY

MAJORITY CHAIR Mario M. Scavello

MINORITY CHAIR William F. Keller

SENATE COMMITTEE ON LABOR & INDUSTRY

MAJORITY CHAIR John R. Gordner

MINORITY CHAIR Christine M. Tartaglione

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 11, 2013