

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

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(1) Agency
Department of Labor & Industry,
Workers' Compensation Appeal Board and
Office of Adjudication

(2) Agency Number:
Identification Number: 12-99

IRRC Number: 3047

(3) PA Code Cite:
34 Pa. Code Chapter 111
34 Pa. Code Chapter 131

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

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact:

For Judges' Rules – Elizabeth Crum, Director, Office of Adjudication, 1010 North 7th Street, Harrisburg, PA 17102, Phone No. (717) 783-4151

For Board Rules – Alfonso Frioni, Workers' Compensation Appeal Board, 901 North 7th Street, 3rd Floor South, Harrisburg, PA 17102, Phone No. (412) 531-2680

Secondary Contact: Thomas J. Kuzma, Deputy Chief Counsel, Bureau of Workers' Compensation, 1171 South Cameron Street, Room 327, Harrisburg PA 17104, Phone No. (717) 783-4467

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department of Labor and Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office), has promulgated these final-form regulations for Chapters 111 and 131 of 34 Pa. Code to clarify and provide detailed guidance for practice and procedure before the Board and workers' compensation judges (judges), to provide additional guidance for the litigation of matters before the Board, the Office and judges, and to refine existing rules governing practice and procedures.

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

The Department amends these Rules under the authority contained in sections 401.1; 435(a) and (c); and 1608 of the Workers' Compensation Act (act) (77 P. S. §§ 710, 991(a) and (c) and 2708), 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).

(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 amendments are not mandated by any law. Regulatory action is needed, however, to update certain portions of the Rules to better coordinate procedural requirements involving the Board, judges and the Office due to technological changes brought about by the Department's implementation of the Workers' Compensation Automation and Integration System (WCAIS). Additionally, regulatory action is also needed to address procedural and practical issues associated with the administration and enforcement of the Uninsured Employers Guaranty Fund (UEGF), which was established by the act of November 9, 2006 (P.L. 1362, No. 147) (Act 147 of 2006).

(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.

These amendments are promulgated to ensure that judges, Board Commissioners, Bureau of Workers' Compensation (Bureau) and Board staff, and litigants in the workers' compensation system, will have a clear understanding of the practice and procedures before the Board, the Office and judges. These amendments address changes made in practice since the Rules were last reviewed and altered, including changes due to the implementation of WCAIS. The amendments will expedite the adjudication of workers' compensation claims, increase and unify the options for filing with the Bureau and Board, reduce paperwork requirements among litigants, and reduce expenses for litigants by incorporating technology into workers' compensation proceedings.

Additionally, these amendments aim to correct inefficiencies and diminish costs associated with litigation involving the UEGF. Specifically, the amendments related to UEGF proceedings are intended to promote the efficient use of all parties' litigation resources through better coordination of the claim petition against the employer (LIBC-362 claim petition) with the related claim petition filed against the employer and the UEGF (UEGF Claim Petition). The UEGF is a secondarily liable party to a UEGF claim petition and does not have a pre-existing relationship with the parties which would provide it pre-litigation access to much of the information or witnesses required to defend a claim. More so than other parties in typical workers' compensation proceedings, the UEGF must rely heavily on information brought out after the filing of a UEGF claim petition through subsequent discovery and hearings. The procedural rules promulgated in Subchapter D of the final-form rulemaking benefit all parties, including the UEGF, by promoting quicker consolidation and resolution of the claims in UEGF proceedings and reducing the additional time and effort required to obtain information, join all appropriate parties and reach a judicial determination

regarding potential liability and award of the claim. In doing so, the rulemaking reasonably provides for judicial involvement as necessary to ensure that the litigation proceeds to a resolution efficiently and fairly for all parties.

(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.

No. There are no comparable federal standards.

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

Comparison to other states' provisions is impractical because statutory requirements and systems differ from state to state. However, the amendments are likely to enhance the Commonwealth's competitive advantage because the Rules provide up-to-date guidance for litigation of workers' compensation matters. These amendments 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.

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

The final-form regulations amend both 34 Pa. Code Chapter 111 and 131. The Rules 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 regulations incorporate changes made necessary by recent technological and legislative changes and advise the parties of up-to-date rules for practice and procedure before the Board, the Office and judges.

(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.)

In 1980, the Secretary of the Department established a Rules Committee (Committee) to develop rules and procedures for the workers' compensation system. The Committee is comprised of Board representatives, judges, equal numbers of representatives of the claimant and defense bar and Department representatives. From time to time, this Committee reconvenes to review the existing Rules and to consider whether amendments or revisions are necessary in light of any changes in existing workers' compensation law, practice, or procedures.

The Rules have been amended in 1989, 1991, 2002 and 2009. Most recently, the Committee reconvened on November 18, 2011, for the purpose of reviewing the existing Rules in light of the expected advent of the Department's new computer system, WCAIS. The Committee considered comments received from various stakeholders since the last amendments took effect in 2009. Additionally, the Committee discussed the need for rules to address issues raised by the creation of the UEGF in 2007.

After several meetings in 2011 and 2012, the Committee created a draft of proposed revisions. In the fall of 2012, the draft was widely circulated throughout the workers' compensation community for the purpose of receiving additional comment. The Committee conducted interactive meetings with various groups, including the Pennsylvania Bar Association at the Workers' Compensation Fall Section Meeting, the Philadelphia Bar Association, the Allegheny County Bar Association, and the Lancaster County Bar Association, to discuss the proposed changes and solicit comments. Additionally, the Committee presented the suggested amendments to the Pennsylvania Self-Insurers Association (PSIA) and the Workers' Compensation Advisory Council.

Following these meetings and presentations, the Committee circulated all comments and suggestions it received among the Committee members. Several Committee meetings were conducted for the purpose of reviewing the suggestions and revising the proposed changes, after which the Committee voted on and approved proposed revisions to the Rules on May 2, 2013. Thereafter, a proposed rulemaking was published at 44 Pa. B. 996 (February 22, 2014). As a result, the Department received written comments from the following: Thomas C. Lowry, Esquire; Workers' Compensation Judge Geoffrey L. Seacrist; Samuel R. Marshall, Esquire (on behalf of The Insurance Federation of Pennsylvania, Inc. (IFP)); Wendy A. Fleming Esquire, Joseph Turchi, Esquire and Workers' Compensation Judge Holly A. San Angelo (on behalf of the Philadelphia Bar Association's Workers' Compensation Section (PBAWCS)); Workers' Compensation Judge Joseph Hakun; Workers' Compensation Judge Ada Guyton (on behalf of the Pennsylvania Workers' Compensation Judges Professional Association (PWCJPA)); Workers' Compensation Judge Karl Baldys; Ronald L. Calhoon, Esquire; Workers' Compensation Judge Kenneth P. Walsh; G. Michael Spates, Esquire (on behalf of Rawle & Henderson LLP); and Workers' Compensation Judges Susan E. Kelley, Paul E. Baker, Francine Lincicome and Kelly F. Melcher. The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated April 23, 2014.

In response to the comments received, the Department carefully reviewed and considered all of the suggestions and concerns raised by the commentators. The Department also participated in discussions with certain commentators and Committee members regarding their concerns related to the new

procedural rules involving the UEGF. The Committee itself met on May 16, 2014 to discuss the comments, after which several subcommittees were convened to consider specific comments. The Committee again met on July 11, 2014, to discuss revisions to the provisions, which included several changes in response to the comments. Ultimately, the Committee voted to approve, unopposed, the revisions that are incorporated into this final-form rulemaking.

(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?

Because the regulations impact procedural requirements involving workers' compensation claims, all parties who are involved with workers' compensation claims in Pennsylvania will be affected by the final-form regulations including, but not limited to, injured employees/claimants; employers; workers' compensation insurers; third-party administrators; health care providers; judges; Bureau, Board, and Office officials and employees; and respective legal counsel.

(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.

The persons, groups or entities required to comply with the final-form regulations: approximately 475 workers' compensation insurers, including the State Workers' Insurance Fund; approximately 725 individual self-insured employers and 18 group self-insurance funds, 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.

(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.

The final-form regulations may provide some savings to the regulated community in reduced copying and mailing costs, as Board and Bureau forms may be filed and served electronically. Additionally, the regulations provide the more efficient use of resources in proceedings involving the UEGF.

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

No one will be adversely affected.

(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.

No significant costs or savings are anticipated. The regulations may provide some savings in reduced copying and mailing costs, as Board and Bureau forms may be filed and served electronically. Additionally, the regulations provide for the streamlining of the process and the more efficient use of resources in proceedings involving the UEGF.

(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.

No significant costs or savings are anticipated. To the extent that the local governments are an employer, the regulations may provide some nominal savings in reduced copying and mailing costs, as Board and Bureau forms may be filed and served electronically.

(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.

No significant costs or savings are anticipated. To the extent that the state government is an employer, the final-form regulations may provide some nominal savings in reduced copying and mailing costs, as Board and Bureau forms may be filed and served electronically. Additionally, the regulations provide the more efficient use of resources in proceedings involving the Department's UEGF.

(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.

The final-form regulations do not require the creation of any new forms. There are no other additional reporting, recording or paperwork requirements for either the Commonwealth or regulated community.

(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	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable
Local Government	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable
State Government	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable
Total Savings	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable
COSTS:						
Regulated Community	NONE	NONE	NONE	NONE	NONE	NONE
Local Government	NONE	NONE	NONE	NONE	NONE	NONE
State Government	NONE	NONE	NONE	NONE	NONE	NONE
Total Costs	NONE	NONE	NONE	NONE	NONE	NONE
REVENUE LOSSES:						
Regulated Community	NONE	NONE	NONE	NONE	NONE	NONE
Local Government	NONE	NONE	NONE	NONE	NONE	NONE
State Government	NONE	NONE	NONE	NONE	NONE	NONE
Total Revenue Losses	NONE	NONE	NONE	NONE	NONE	NONE

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

Program	FY -3	FY -2	FY -1	Current FY
Workers' Comp. Administrative Fund	\$ 81,990,000	\$ 81,896,000	\$ 76,028,000	\$ 70,666,000

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(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.

N/A

(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.

There is no need for special provisions. The regulations as a whole will expedite the procedures and assist all workers' compensation litigants.

(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.

Alternative regulatory schemes were not considered because the Department considered the amendments as the most appropriate and reasonable method for up-to-date guidance for litigation of workers' compensation matters.

(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.

Alternative regulatory schemes were not considered because the Department considered the amendments as the most appropriate and reasonable method for up-to-date guidance for litigation of workers' compensation matters.

Furthermore, the amendments will not have any adverse impact on small businesses.

(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.

N/A

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

- | | |
|---|---|
| A. The date by which the agency must receive public comments: | N/A |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Fall 2014 |
| D. The expected effective date of the final-form regulation: | upon publication in the <i>Pa. Bulletin</i> |
| E. The date by which compliance with the final-form regulation will be required: | upon publication in the <i>Pa. Bulletin</i> |
| F. The date by which required permits, licenses or other approvals must be obtained: | N/A |

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

The Department will continue to monitor the impact and effectiveness of the regulations.

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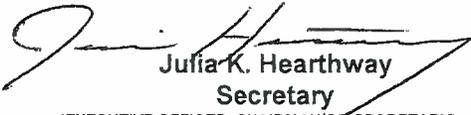
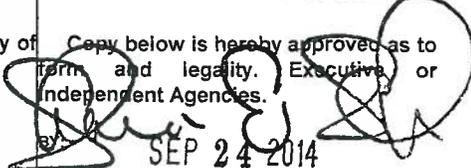
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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY:</p> <p>DEPUTY ATTORNEY GENERAL</p> <p>DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p align="center">Department of Labor & Industry (AGENCY)</p> <p>DOCUMENT / FISCAL NOTE NO 12-99</p> <p>DATE OF ADOPTION:</p> <p>BY:  Julia K. Hearthway Secretary (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p> SEP 24 2014 DATE OF APPROVAL</p> <p>Exec. Deputy General Counsel</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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FINAL-FORM RULEMAKING

Title 34. LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 Pa. Code, CH. 111]

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

[34 Pa. Code, CH. 131]

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

RULES AND REGULATIONS

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CHS. 111 AND 131]

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

The Department of Labor and Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office) amends 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) to provide additional guidance for the litigation of matters before the Board, the Office and workers' compensation judges (judges), and to refine the regulations governing practices and procedures before the Board, the Office and judges.

Statutory Authority

This final-form rulemaking is proposed under the authority in sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation Act (act) (77 P. S. §§ 710, 991(a) and (c) and 2708), section 2205 of The Administrative Code of 1929 (71 P. S. § 565) and section 414 of The Pennsylvania 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 is comprised of Board representatives, judges, equal numbers of representatives of the claimant and defense bar and Department representatives. From time to time, this Committee reconvenes to review Chapters 111 and 131 and to consider whether amendments are necessary in light of changes in existing workers' compensation law, practice or procedures.

Chapters 111 and 131 have been amended in 1989, 1991, 2002 and 2009. Most recently, the Committee reconvened on November 18, 2011, for the purpose of reviewing Chapters 111 and 131 in light of recent appellate decisions and the advent of the Department's new computer system, Workers' Compensation Automation and Information System (WCAIS). The Committee also considered comments received from various stakeholders since the last amendments took effect in 2009. Additionally, the Committee discussed the need for rules to address issues raised by the creation of the Uninsured Employers Guaranty Fund (UEGF) in 2007.

After several meetings between 2011 and 2012, the Committee created a draft proposed rulemaking. In fall 2012, the draft was widely circulated throughout the workers' compensation community for the purpose of receiving additional comment. The Committee conducted interactive meetings with various groups, including the Pennsylvania Bar Association at the Workers' Compensation Fall Section Meeting, the Philadelphia Bar Association, the Allegheny County Bar Association and the Lancaster County Bar Association to discuss the proposed changes and solicit comments. Additionally, the Committee presented the suggested amendments to the Pennsylvania Self-Insurers Association and the Workers' Compensation Advisory Council.

Several Committee meetings were conducted for the purpose of reviewing the suggestions and revising the proposed changes, after which the Committee voted on and approved proposed revisions to the Rules on May 2, 2013. Thereafter, a proposed rulemaking was published at 44 Pa. B. 996 (February 22, 2014). As a result, the Department received written comments from the following: Thomas C. Lowry, Esquire; Workers' Compensation Judge Geoffrey L. Seacrist; Samuel R. Marshall, Esquire (on behalf of The Insurance Federation of Pennsylvania, Inc. (IFP)); Wendy A. Fleming, Esquire, Joseph Turchi, Esquire and Workers' Compensation Judge Holly A. San Angelo (on behalf of the Philadelphia Bar Association's Workers' Compensation Section (PBAWCS)); Workers' Compensation Judge Joseph Hakun; Workers' Compensation Judge Ada Guyton (on behalf of the Pennsylvania Workers' Compensation Judges Professional Association (PWCJPA)); Workers' Compensation Judge Karl Baldys; Ronald L. Calhoon, Esquire; Workers' Compensation Judge Kenneth P. Walsh; G. Michael Spates, Esquire (on behalf of Rawle & Henderson LLP); and Workers' Compensation Judges Susan E. Kelley, Paul E. Baker, Francine Lincicome and Kelly F. Melcher. The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated April 23, 2014.

In response to the comments received, the Department carefully reviewed and considered all of the suggestions and concerns raised by the commentators. The Department also participated in discussions with certain commentators and Committee members regarding their concerns related to the new procedural rules involving the UEGF. The Committee itself met on May 16, 2014 to discuss the comments, after which several subcommittees were convened to consider specific comments. The Committee again met on July 11, 2014 to discuss revisions to the provisions, which included several changes in response to the comments. Ultimately, the Committee voted to approve, unopposed, the revisions that are incorporated into this final-form rulemaking.

Purpose

This final-form rulemaking updates Chapters 111 and 131 to promote efficiency and to address new technological and statutory changes. Chapters 111 and 131 have not been updated since 2009. Since that time, the Department has been working on implementing WCAIS, an online workers' compensation claims information system encompassing the processes handled by the Bureau of Workers' Compensation (Bureau), the Office and Board. Also, during these years, the Department has monitored proceedings involving the UEGF and discovered inefficiencies and increased costs for the parties under the current system. The final-form rulemaking addresses these issues by incorporating necessary changes to improve the efficiency of the system, expand filing options and ensure that parties will continue to be advised of up-to-date rules for practice and procedures before the Board, Office and judges.

Summary of Final-Form Rulemaking and Responses to Comments

This final-form rulemaking clarifies and provides detailed guidance for practice and procedure before the Board, the Office and judges.

IRRC made the general comment that the Department should make every effort to resolve and reach consensus among the regulated community as it prepares the final-form regulation. In response to the comments, the Department held discussions and met with certain commentators to discuss their concerns. These meetings included a discussion of the insurance community's concerns with Samuel R. Marshall, Esquire on behalf of IFP, as well as discussion of the judges' concerns about the UEGF provisions with Ada Guyton, who was present on behalf of the PWCJPA. Following these discussions, several changes were made to the final-form regulations consistent with the comments received. With regard to the UEGF provisions, the significant final-form changes represent an agreed-upon compromise which retains language which reasonably satisfies the need for rules specific to UEGF proceedings in a manner which accommodates the judges' ability to exercise discretion in conducting UEGF proceedings following the first hearing.

IFP commented that future projects should include insurers as well as other stakeholders since the defense bar is not always the same. The Department closely monitors its various regulations and is committed to seeking and considering input from all stakeholders, including the insurance community, regarding concerns or suggestions for improvement to promote the efficiency of the workers' compensation system. Insofar as the Chapter 111 and 131 regulations impact litigation before the Board and judges, the Rules Committee established by the Department is primarily comprised of representatives directly involved in the litigation process, including attorneys with many years of experience representing both claimant and insurer interests in these proceedings. However, the Department will continue to strive to be as inclusive as possible to ensure that all stakeholders' interests are considered in future regulatory projects.

IRRC also generally commented that the Department should ensure that the preamble and Regulatory Analysis Form make clear the need for the changes implemented by the final-form regulation. Many of the changes implemented in the final-form regulation were necessary to accommodate electronic filings and transactions as the result of the Department's implementation of its new computer system, WCAIS, to eliminate multiple or duplicative filings or to reflect the current practice in the community. Further changes, including those contained in new Subchapter D (related to proceedings involving the UEGF), were necessitated to address procedural issues that have developed since the creation of the UEGF in 2007, pursuant to the act of November 9, 2006 (P.L. 1362, No. 147). The Department has also addressed this issue more specifically throughout the preamble, as necessary, in its discussion of the comments to individual rules, as well as in the Regulatory Analysis Form.

Chapter 111. Special rules of administrative practice and procedure before the Workers' Compensation Appeal Board

The Department amends Chapter 111 to delete requirements that multiple copies of documents shall be filed with the Board.

Section 111.3 (relating to definitions) is amended to clarify filing dates if filing by mail, common carrier, electronically or by hand-delivery, and to provide that a United States Postal Service Certificate of Mailing, USPS Form 3817 or similar form can be used as evidence of the filing date.

IRRC questioned whether the proposed definition of “common carrier” in § 111.3 was intended to include taxicabs and utility companies, commenting that the Department should clarify the definition of common carrier, as appropriate. IFP recommended consistency of the filing requirements in § 111.3 of the Board rules and § 131.11(a) (relating to filing, service and proof of service) of the judges rules. The Department does not intend to include taxicabs and utility companies as methods of filing by “common carrier.” Therefore, in response to the comments from IRRC, the Department has replaced the proposed definition of “common carrier” with language within the definition of “filing” which clarifies that an appeal may be delivered by a “common carrier of property” which is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board. This language is now consistent with the common carrier filing provisions recently promulgated in other Department regulations. *See* 34 Pa. Code §§ 63.25(c) and 101.82(b)(2). Upon further consideration, the Department also agrees with IFP that the filing requirements contained within the Board and judges rules should be consistent to avoid confusion within the workers’ compensation community. As such, reference to the use of the United States Postal Service Certificate of Mailing has been added to the definition of “filing” in § 111.3, and the subsections within that definition have been reordered consistent with § 131.11(a).

Section 111.11 (relating to content and form) is amended to clarify that an appeal of a judge's decision is deemed to include all claim numbers, dispute numbers and petition numbers referenced in the decision being appealed.

IFP questioned whether the proposed language in § 111.11(a)(1) that an appeal is deemed to include “all claims, disputes and petitions” intends that there can be no partial appeals. IRRC commented that if it is the Department’s intent to disallow partial appeals under § 111.11(a) (relating to content and form), the Department should explain the need for, and reasonableness of, this requirement. IRRC asked the Department to clarify this provision if disallowance of partial appeals is not intended. In response, the Department does not intend this change to disallow partial appeals. Rather, this change is intended to streamline the appeal process by preventing the need for separate, duplicative appellate filings by the same party where the judge’s decision involves matters which are identified by multiple claim numbers, dispute numbers or petition numbers in WCAIS. To clarify this, the word “numbers” was added after the references to claim, dispute and petition in the final provision. Notwithstanding this provision, it remains that only issues properly raised in the appellate filing are on appeal, consistent with current case law.

Section 111.12 (relating to filing, service and proof of service) is amended to clarify requirements for appeals filed with the Board.

IRRC commented that § 111.12 does not provide information on where online electronic filing procedures will be located and asked that the Department clarify how electronic filing will be

implemented. The electronic filing procedures are set forth in detail on the Department's website at www.dli.state.pa.us. For clarity, the Department has added a reference to the website location in this provision.

Section 111.13 (relating to processing of appeals and cross appeals) is amended to delete the requirement that the date of the acknowledgement is 3 days subsequent to the date the acknowledgement is mailed.

Section 111.14 (relating to motions to quash) is amended to delete the requirement that two copies of a motion to quash shall be filed with the original motion.

Section 111.16 (relating to briefs: content and form and time for filing) is amended to delete the requirement that two copies of a brief shall be filed with the original brief.

Section 111.21 (relating to content and form) is amended to clarify that the decision and order of the judge must be included with a request for supersedeas filed with the Board.

Section 111.22 (relating to filing) is amended to clarify the requirements for a request for supersedeas filed with the Board.

Section 111.24 (relating to disposition of request for supersedeas) is amended to specify that the Board will have 30 days from the date of the receipt of the request for supersedeas to rule on a request or the request will be deemed denied.

Section 111.31 (relating to applicability) is amended to clarify that Chapter 111, Subchapter D (relating to other petitions) also applies to petitions for reconsideration under section 426 of the act (77 P. S. § 871).

Section 111.32 (relating to form/content) is amended to delete the requirement that two copies of a petition or request shall be filed with the original petition or request.

Section 111.34 (relating to answers to petitions) is amended to delete the requirement that two copies of an answer shall be filed with the original answer.

Chapter 131. Special rules of administrative practice and procedure before workers' compensation judges

The Department amends Chapter 131 to replace reference to the Bureau of Workers' Compensation with reference to the Department.

Section 131.3 (relating to waiver and modification of rules) is amended to provide that the judge cannot waive or modify the provisions in section 131.202 (relating to first hearing information and stay).

IRRC commented that the Department should revise the proposed language in § 131.3, which had provided that the judge cannot waive or modify the provisions in "Subchapter D," to clarify

the specific provisions in “Subchapter D” that are being addressed. Joseph Hakun commented that references to “Subchapter D” in § 131.3 may be read as expanding the bar to a judge’s ability to waive or modify rules, to all rules involving the UEGF. PWCJPA commented that reference to “Subchapter D” prohibits any exercise of discretion on the part of the judge. Susan E. Kelley, Paul E. Baker, Francine Lincicome and Kelly F. Melcher raised an identical concern to this section. Karl Baldys also noted his support of PWCJPA’s comment. In response to the comments, and in connection with further changes made to the final-form provisions in Subchapter D, the Department has clarified the amendment to § 131.3 to specify that only the first hearing provisions of § 131.202 in Subchapter D are included in the exception to the waiver and modification of rules.

Related comments to those received regarding § 131.3 were also received regarding the proposed rulemaking’s exception of “Subchapter D” from the one-day trial provisions found in § 131.53a(a) (relating to consolidated hearing procedure). The Department disagreed that the proposed amendment to § 131.53a(a) would operate as a complete bar or prohibition of all judicial discretion. However, based upon further consideration and discussion with some of the commentators, which discussion resulted in the above clarification to § 131.3 as well as the Department’s inclusion of new, discretionary language regarding the scheduling of hearings in UEGF matters in § 131.203 (related to hearing procedures), the proposed change to § 131.53a is no longer necessary and has been removed.

Section 131.5 (relating to definitions) is amended to add definitions of “Board,” “claim petition” and “UEGF claim petition.” The Department adds a definition of “writing” to clarify that a “writing” can include electronic communications. The Department adds “UEGF” to the definition of “Uninsured Employers Guaranty Fund.”

IFP and IRRC commented that the Department should explain the need for amending the definition of “party” in § 131.5 to include “employee” and how an employee differs from a claimant. Upon further consideration, the Department has removed the proposed reference to “employee” within the definition of “party” to avoid redundancy, as it is otherwise included within the definition of claimant.

Section 131.11 (relating to filing, service and proof of service) is amended to clarify current filing and service requirements, including allowing filing by common carrier, and to provide that a United States Postal Service Certificate of Mailing, USPS Form 3817 or similar form can be used as evidence of the filing date.

IFP commented that the filing provisions in § 131.11 should be consistent with the revisions to the filing provisions in § 111.3, including filing by common carrier, or in the alternative, the Department should explain the reasons for differences in the filing requirements. IRRC commented that the Department should ensure that the proposed language in § 131.11(a)(3) (relating to filing, service and proof of service) provides clear filing requirements for the regulated community. IRRC also recommended that the filing and service information and address for the Department which is set forth in § 131.11(e), and any changes thereto, be published both in the *Pennsylvania Bulletin* and on the Department’s website, not just in one or the other location. As addressed in the response to § 111.3, the Department agrees that the filing

requirements in the rulemaking should be consistent throughout and has made the necessary changes to § 131.11(a) to ensure clarity and consistency, by including language similar to § 111.3 and its other regulations that also allows filing by a “common carrier of property.” In addition, the Department agrees with the recommendation by IRRC regarding § 131.11(e), and has amended that subsection to provide for publication in both the *Pennsylvania Bulletin* and on the Department’s website.

Section 131.32 (relating to petitions except petitions for joinder and challenge proceedings) is amended to provide that a party shall file forms as prescribed by the instructions on the form. If a form is not prescribed by the Department, the party shall file an original of the petition with the Department.

Section 131.33 (relating to answers except answers to petitions for joinder and challenge proceedings) is amended to clarify requirements for filing answers to claim petitions and other petitions, except petitions for joinder, challenge proceedings and review of Utilization Review determinations.

IFP commented that the distinction between claim petitions and all other petitions in proposed § 131.33(a) is confusing. IFP also commented that the Department should explain the reason for the addition of petitions to review utilization review determination to § 131.33(a). The distinction between claim petitions and all other petitions in this section is based upon, and consistent with, Section 416 of the act, 77 P.S. § 821, which provides in part that the failure to timely answer and deny facts alleged in a claim petition only, may result in those facts being deemed admitted. It is also consistent with the long-standing Commonwealth Court decision in *Yellow Freight Sys., Inc. v. WCAB (Madara)*, 423 A.2d 1125 (Pa. Cmwith. 1981). To avoid confusion however, the Department agrees with IFP that the proposed additional reference to petitions to review utilization review determination should be removed, as those petitions are separately addressed in § 127.554 (relating to petition for review by bureau – no answer allowed) of Chapter 127 (relating to workers’ compensation medical cost containment), 34 Pa. Code § 127.554.

Section 131.36 (relating to joinder) is amended to specify that petitions for joinder and answers to the joinder petitions should be filed with the Department.

Section 131.52 (relating to first hearing procedures) is amended to specify that, at the first hearing, parties shall identify Department documents that are relevant to the claim or dispute and, if not available electronically, provide actual copies of those documents to the judge.

IRRC commented that the proposed language in § 131.52(e) seems to move responsibility for obtaining documents to the judge and, therefore, asked that the Department explain the need for, and reasonableness of, this change. Geoffrey L. Seacrist commented that § 131.52(e) should not eliminate the requirement that the parties provide to the judge copies of all relevant documents filed with the Department. The Department’s intent is not to move responsibility for obtaining documents to the judge, but rather to eliminate the duplicate filing of documents which are already electronically available to the judge within the Department’s new electronic system, WCAIS. This section does not preclude the parties from also providing copies of the filed

documents to the judge if necessary and, to this end, the Department has clarified this provision to provide that the parties shall provide the documents if not otherwise electronically available to the judge.

Section 131.53b (relating to bifurcation and motions for disposition of a petition) is amended to allow motions for disposition of a petition and establish guidelines for their handling.

IFP commented that the Department should clarify what motions were envisioned under the proposed language in § 131.53b(b), which as proposed involved motions for “summary disposition of a claim.” IFP also commented that the Department should clarify the process after the motion is filed, including the opportunity for response, and questioned whether such motions have any particular requirements. IRRC commented that the proposed language in § 131.53b(b) was silent as to whether and when an opposing party may file a response to a motion. IRRC asked the Department to explain the need for, and reasonableness of, this provision, and to ensure it is clear. PBAWCS commented that the 45-day motion procedure in § 131.53b(b) adds unnecessary delay to the litigation process and appears to leave no mechanism for when or whether an opposing party may respond.

The Department intends § 131.53b(b) to streamline litigation by providing an expedited method, upon a party’s motion, for judges to dispose of a petition pending before them. To clarify its purpose, the Department has removed the reference to “summary disposition of a claim” and replaced it with “disposition of a petition.” The Department believes that requirements as to the form, as well as the timing, of a response, should be left to the discretion of the judge. To better clarify the process however, the Department has added specific language indicating that the response shall be made within a time specified by the judge, and that the judge will issue an order or provide reasons for not doing so within 30 days of the response due date. The Department also removed the language that the articulated reasons for not ruling on the motion be “substantial and compelling.” Insofar as the provision provides that pendency of the motion does not act as a stay, the Department disagrees with the comment that the procedure will add unnecessary delay to the litigation process. To the contrary, the Department believes that this procedure will aid in streamlining the litigation.

Section 131.55 (relating to attorney fees and costs) is amended to require claimant's counsel to submit a copy of the fee agreement or any other statement or claim for disbursements, costs and expenses and to obtain approval from the judge or the Board before the agreement, statement or claim will be valid.

Thomas C. Lowry inquired whether § 131.55(a) precludes an attorney who is operating with a signed fee agreement from obtaining, without approval of a judge, an advance from the claimant to pay litigation costs as set forth in the agreement. Ronald L. Calhoon commented that if a claimant’s attorney cannot charge or collect costs of litigation from a client unless approved by a judge under § 131.55(a), many injured workers will not be able to find representation because attorneys may not advance such costs. IRRC questioned the need for the proposed language in § 131.55(a) (relating to attorney fees and costs), commenting that this requirement could delay legal representation or eliminate it altogether for a claimant seeking assistance. IRRC also asked whether an attorney must be expected to advance costs on behalf of a client even where there is a

contingent fee in place. Further, IFP commented that the Department should clarify the meaning of the term “claim” in proposed § 131.55(a).

The amended language in § 131.55(a) was previously found in § 121.24 (relating to approval of fees) of Chapter 121 (relating to general provisions), 34 Pa. Code § 121.24. In 2007, the Department rescinded that section by final-form rulemaking published at 37 Pa.B. 4181, noting in the preamble that the requirements concerning attorney fees are more appropriately addressed in Chapter 131. This language is based upon, and consistent with, the approval requirements already found in Sections 440, 442 and 501 of the act, 77 P.S. §§ 996, 998 and 1021. This language is not intended to alter the existing fee approval requirements under Sections 440, 442 and 501 or to change the current practice for seeking fee approval, and therefore should not delay or eliminate legal representation for injured workers. The language neither requires nor prohibits the advancement of costs, but rather reinforces the existing requirements in the act and Rules of Professional Conduct regarding the need for executed fee contracts regardless of which party is ultimately determined to be liable for the payment of the fees and costs in the case. The Department believes that this section reasonably ensures that the necessary approval of fee agreements and claims for disbursements, costs and expenses is promptly obtained by counsel, both when and as required by Sections 440, 442 and 501 of the act. Further, the Department intends that the term “claim” in this section refers to a claim for fees or other disbursements, costs or expenses. To clarify this meaning, the Department has removed the initial use of the term in the first sentence.

Section 131.63 (relating to time for taking oral depositions) is amended to provide that an oral deposition may be taken at any time subsequent to the date of the assignment, rather than the date of service, of the petition by the Department.

Section 131.81 (relating to subpoenas) is amended to provide for electronic subpoena requests and to prohibit service of subpoenas until 10 days after issuance by the judge unless otherwise agreed to by the parties.

IRRC made several comments regarding the proposed language in § 131.81(b) pertaining to the proposed 7-day period to object to subpoena requests. IRRC inquired about what was to occur following the filing of an objection, why objections were to be made to a request rather than service of a subpoena, and how the Department determined that a 7-day period was appropriate. IRRC commented that the Department should explain the need for, and reasonableness of, the provision and ensure the procedures are clear. IFP also commented that the Department should explain how the 7-day period for objecting to a request for a subpoena was determined, and whether this new rule is consistent with the filing rules contained in § 131.11 (relating to filing, service and proof of service) or a different rule. Geoffrey L. Seacrist commented that the proposed period for objections to a subpoena in § 131.81(b) should begin on the date of service, not the date the request is made to the judge. G. Michael Spates commented that the proposed 7-day period for objections to a subpoena in § 131.81(b) is too short and should be extended to 10 calendar days. Mr. Spates also suggested adding language to § 131.81(b) requiring that the judge circulate an interlocutory order on the party’s objection prior to the issuance of the subpoena. Thomas C. Lowry questioned the requirement in § 131.81(a) that the party requesting a subpoena “shall complete the subpoena,” noting his experience that a records

deposition date was usually left blank due to the time delay between submission and return of a paper subpoena from a judge. Mr. Lowry also commented that § 131.81(c) should include a requirement that a copy of the service of a subpoena also be served on the judge.

In response to the comments about the proposed 7-day period to object to a subpoena request in § 131.81(b), and upon further consideration, the Department has removed this requirement from the final-form rulemaking. The Department agrees that the proposed 7-day period was both short and difficult to calculate. Moreover, the Department believes that the current practice for objecting to subpoenas under § 131.81(c) [now § 131.81(d)] is sufficient. The Department has retained as modified the amended language in § 131.81(b) requiring that a subpoena may not be served until 10 days after its issuance absent agreement of the parties. The Department believes that this requirement will reasonably encourage prompt communication and resolution of potential concerns about subpoenas, and provide opportunity for objections to be raised promptly prior to service, if necessary. While a judge may issue an interlocutory order concerning an objection to a subpoena, the Department does not agree with the comment that this should be required by regulation, and this change has not been made. The Department believes that this should be left to the discretion of the judge. In addition, the amended language in § 131.81(a) requiring parties to “complete the subpoena” is not intended to change current practice, but rather to emphasize that it is the responsibility of the party, not the judge, to fill out the paper or electronic subpoena request. In response to the comment about delay in issuance of subpoenas, the Department notes that the new electronic system, WCAIS, has greatly reduced the time between the subpoena request and the issuance of the signed subpoena by the judge. In WCAIS, registered parties can file subpoena requests, and judges can issue subpoenas, electronically and almost immediately to those who have elected electronic service. Moreover, while the parties are not prohibited from providing a copy of service of the subpoena on the judge if they desire, it is not necessary. As such, the Department does not agree with the comment that § 131.81(c) should require such service in all cases, and this change has not been made.

Section 131.91 (relating to stipulations of fact) is amended to add a paragraph requiring stipulations to be signed by the claimant, all counsel and employer, if the employer is unrepresented. The Department further adds paragraphs requiring the stipulation to expressly provide which petitions are being resolved; whether a petition is being withdrawn, granted or dismissed; and whether the parties are requesting an interlocutory order or a final order.

IFP commented that the Department should clarify what stipulations fall within the phrase “dispositive of the case,” as used in the proposed language in § 131.91(b), in order to require satisfaction of this subsection’s signature requirements. IFP also sought clarification of the purpose of requiring a claimant to sign a stipulation where they are represented by counsel or the matter involves a petition to review utilization review determination. Upon further consideration, the Department has removed the reference to “dispositive of the case” from § 131.91(a)(3) in order to avoid confusion concerning the signature requirement. The final-form regulation now clarifies that the signatures, including the signature of claimant, are required for all stipulations. The Department believes that requiring the claimant’s signature, even where represented by counsel, is reasonable and necessary to allow the judge to be satisfied, as required by § 131.91(a)(2), that the claimant understands the effect of the stipulation on future compensation and medical expenses. This is also reasonable and necessary for stipulations

involving a petition to review utilization review determination, whether or not the petition was filed by the claimant, to ensure that the claimant understands the effect on his medical expenses for treatment with the provider under review.

The Department adds Chapter 131, Subchapter D (relating to proceedings involving the UEGF) to provide specific guidelines concerning these proceedings.

IRRC commented that the Department should explain the need for, and reasonableness of, adding Subchapter D in Chapter 131, based on the concerns regarding certain provisions raised by commentators. Joseph Hakun commented that the UEGF rules as proposed would bar the exercise of discretion by judges in procedural matters. PWCJPA, as well as Susan E. Kelley, Paul E. Baker, Francine Lincicome and Kelly F. Melcher, also commented that the UEGF rules as proposed would prohibit judicial discretion, however each commentator also acknowledged that procedural rules may be appropriate to address legitimate needs of the UEGF. Karl Baldys noted his support of PWCJPA's comment.

This new Subchapter is intended to promote the efficient use of all parties' litigation resources through better coordination of the claim petition against the employer (LIBC-362 claim petition) with the related claim petition filed against the employer and the UEGF (UEGF claim petition). The UEGF is a secondarily liable party to a UEGF claim petition and does not have a pre-existing relationship with the parties which would provide it pre-litigation access to much of the information or witnesses required to defend a claim. More so than other parties in typical workers' compensation proceedings, the UEGF must rely heavily on information brought out after the filing of a UEGF claim petition through subsequent discovery and hearings. The Department believes, as acknowledged by the commentators, that procedural rules are appropriate to address the legitimate needs of this statutorily-created fund. Indeed, in enacting the UEGF, the legislature provided that the Department "may promulgate regulations for the administration and enforcement" of the UEGF. *See* 77 P.S. § 2708. The procedural rules promulgated in Subchapter D of this final-form rulemaking benefit all parties, including the UEGF, by promoting quicker consolidation and resolution of the claims in UEGF proceedings and reducing the additional time and effort required to obtain information, join all appropriate parties and reach a judicial determination regarding potential liability and award of the claim. In doing so, the rulemaking reasonably provides for judicial involvement as necessary to ensure that the litigation proceeds to a resolution efficiently and fairly for all parties.

Section 131.201 (relating to petitions) provides that all references to petitions in Chapter 131, Subchapter D shall be defined as under § 131.5.

Section 131.202 (relating to first hearing information and stay) directs a judge to provide information about the UEGF to a claimant in a LIBC- 362 claim petition when a UEGF claim petition has not been filed and there is not an insurer listed on the notice of assignment or the insurer has filed a motion for dismissal based on noncoverage. If the claimant indicates an intention to file a UEGF claim petition, the judge is directed to stay the proceedings on the LIBC-362 claim petition until 20 days after the assignment of the UEGF claim petition. If the UEGF claim petition is not filed within 45 days, the LIBC-362 claim petition will proceed. This section cannot be waived or modified, as otherwise provided in § 131.3.

IRRC commented that the Department should explain the need for, and reasonableness of, the requirement in § 131.202(a) that the judge is to inform the claimant of the existence of the UEGF. PWCJPA commented that the requirement of informing the claimant of the existence of the UEGF compromises the judge's independence, may subject the judge to being called as a witness, and is contrary to certain of the judges' code of ethics requirements involving avoiding impropriety, performing duties impartially and upholding the integrity of the workers' compensation system found in section 1404(a) of the act, 77 P.S. § 2504. Susan E. Kelley, Paul E. Baker, Francine Lincicome and Kelly F. Melcher raised an identical concern to this section. Karl Baldys also noted his support of PWCJPA's comment.

This regulation aims to promote due process and judicial economy by ensuring prompt inclusion of all potential parties, including the UEGF, to a claim against an uninsured employer. By requiring a judge to provide information about the UEGF and to stay the first hearing on a LIBC-362 claim petition until 20 days after the notice of assignment of the UEGF claim petition (if one is filed), this regulation promotes efficiency and reduces costs for all parties by eliminating duplicative hearings and depositions necessitated by the UEGF's late arrival to the claim proceeding. The Department does not agree that requiring the judge to provide information on the existence of the UEGF either compromises judicial independence or is contrary to the judicial code of ethics. The Department also does not believe provision of this information will subject the judge to being called as a witness. First, it is anticipated that this information will be documentary in nature and will be done on the record. The Department recognizes that varying information concerning the UEGF's existence is currently being provided verbally by judges in some matters, sometimes on-the-record and sometimes off-the-record. This rulemaking simply ensures that the provision of the information is uniform across the state for all claimants, in order to allow claimants to make informed decisions as to whether they wish to file a UEGF claim petition. Moreover, insofar as this section relates to judicial procedures in these matters only, the requirement that a claimant inform the judge whether he intends to file a UEGF claim petition following provision of the information is not intended to preclude a later filing to the extent otherwise allowed by law. Second, this section is only applicable in the limited number of cases where a UEGF claim petition has not been filed and there is not an insurer listed on the notice of assignment for the LIBC-362 claim petition or the insurer has filed a motion for dismissal based on noncoverage. Due to the uniqueness of the UEGF from other types of workers' compensation litigation, provision of this information by the judge at the first hearing on the LIBC-362 claim petition, and allowing for a stay for the filing of a UEGF claim petition, is reasonable and necessary to accomplish the goals of due process, judicial economy and fairness. For these reasons, although the Department has agreed to otherwise remove the non-waiver provisions regarding the "one day one trial" procedure found in the proposed rulemaking in §§ 131.203 (relating to hearing procedures) and 131.204 (relating to waiver and modification of §§ 131.202 and 131.203), the non-waiver language regarding § 131.202 has been retained by adding a new subsection (e) in this section. By way of compromise however, following discussions with PWCJPA, this new subsection specifically recognizes that the non-waivability of § 131.202 is "in the interests of judicial economy and due process to have all parties joined as soon as possible, and in recognition of the uniqueness of the UEGF from other types of workers' compensation litigation."

Section 131.203 (relating to hearing procedures) provides that if the UEGF requests live testimony of witnesses before the judge, the judge will schedule hearings to accommodate the request, unless denied for good cause shown and stated on the record.

IRRC commented that the Department should explain the need for, and reasonableness of, the requirement of the agreement of all parties in writing or on the record in order for a judge to waive or modify this section and § 131.202, as found in § 131.204(a) (relating to waiver and modification of §§ 131.202 and 131.203) of the proposed rulemaking. IRRC also asked the Department to explain how this is in the public interest. Joseph Hakun commented that requiring the agreement of all participating parties for waiver or modification of the rules under proposed § 131.204(a), rather than requiring a “good cause” standard, gives an employer who may be subject to criminal sanctions the ability to “veto” a waiver or modification. PWCJPA, Joseph Hakun and Kenneth Walsh commented that requiring agreement of all participating parties inappropriately prohibits any exercise of discretion on the part of the judge in cases involving the UEGF. PWCJPA specifically commented that the judge’s discretion should not be subject to such employers’ consent. Susan E. Kelley, Paul E. Baker, Francine Lincicome and Kelly F. Melcher raised identical concerns to this section. Karl Baldys also noted his support of PWCJPA’s comment.

Upon further consideration and discussion with some of the commentators, the Department has agreed to remove the proposed waiver provision in § 131.204 in its entirety, including the requirement that agreement of all parties was required. In addition, the Department has removed the proposed language in § 131.203 (relating to hearing procedures) which had provided that § 131.53a (relating to consolidated hearing procedures) would not apply to Subchapter D proceedings. The Department has replaced the proposed language in § 131.203 with new language providing that if the UEGF requests live testimony of witnesses before the judge, the judge will schedule hearings to accommodate the request unless denied for good cause shown and stated on the record. The Department believes this language reasonably affords the UEGF, which has no preexisting relationship with the other parties, the necessary opportunity to develop the facts of a case through testimony at a hearing prior to the final hearing in a matter, but also provides the judge with discretion to deny that request utilizing a good cause standard, as suggested by the commentators.

Section 131.204 [formerly § 131.205] (relating to UEGF subpoenas and interrogatories) authorizes judges to issue subpoenas, order testimony and compel completion of written interrogatories concerning the uninsured employer's financial history, condition or ability to pay an award. Additionally, this section authorizes a judge to compel the attendance of the parties at mediation.

Joseph Hakun commented that the UEGF rules should be delayed because there may be interplay between the information to be obtained under proposed § 131.205(a) [now § 131.204(a)] and pending legislation currently in committee in the state legislature. The Department disagrees. The legislation as proposed has no impact on these procedural changes to the practice before judges, nor is there any interplay or overlap between the information to be obtained under this specific section and any of the provisions contemplated in the pending legislative bill.

Ronald L. Calhoun commented that the rule requiring that independent medical examinations take place within 45 days of the first hearing should be amended to include first hearings of any type, including hearings where no testimony is taken. This rule is found in § 131.53(g) (relating to procedures subsequent to the first hearing). This section, however, was not part of the Department's proposed rulemaking. The Department has taken this comment under advisement and will review and monitor the suggestion, with the assistance of the Rules Committee, for a possible future rulemaking.

Affected Persons

Those affected by this final-form rulemaking include the Board Commissioners and officials, employees of the Department, the Office and judges, as well as attorneys and litigants in the workers' compensation system in this Commonwealth.

Fiscal Impact

There is no significant fiscal impact associated with this final-form rulemaking. However, the final-form rulemaking may provide savings to the regulated community through: (1) reduced copying and mailing costs, as the number of copies of filings has been reduced and documents may be filed electronically; and (2) reduced overall litigation expenses for all parties to claim proceedings involving the UEGF due to better coordination and handling of the litigation process in these matters.

Reporting, Recordkeeping and Paperwork Requirements

The final-form rulemaking does not require the creation of new forms. There are no other additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.

Effective Date

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

Sunset Date

A sunset date is not necessary. 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 February 10, 2014, the Department submitted a copy of the proposed rulemaking, published at 44 Pa. B. 996, to IRRC and to the Chairpersons of the Senate Labor and Industry Committee and the House Labor and Industry Committee (Senate and House Committees). In addition, the Department also

provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

The Department also provided IRRC and the Senate and House Committees with copies of the comments received as well as other documents when requested. In preparing these final-form regulations, the Department considered all comments from IRRC and the public. The Senate and House Committees did not comment.

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

Findings

The Department finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the related regulations in 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

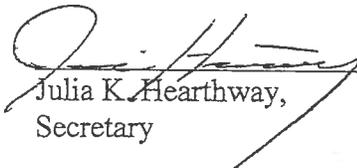
- (a) The regulations of the Department, 34 Pa. Code Chapters 111 and 131, are amended by adding Subchapter D to Chapter 131 and §§ 131.201 – 131.204; and by amending §§ 111.3, 111.11 – 111.14, 111.16, 111.21 – 111.24, 111.31, 111.32, 111.34, 131.3, 131.5, 131.11, 131.21, 131.32, 131.33, 131.36, 131.50, 131.52, 131.53a, 131.53b, 131.55, 131.57, 131.58, 131.60, 131.63, 131.81 and 131.91, to read as set forth in Annex A.

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

- (c) The Secretary of the Department shall submit this order and Annex A to IRRC and the Senate and House Committees as required by law.

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

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


Julia K. Hearshway,
Secretary

Fiscal Note: Fiscal Note 12-99 remains valid for the final adoption of the subject regulations.

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.

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

* * * * *

[Bureau]—The Bureau of Workers' Compensation of the Department.]

~~*Common carrier*—An entity which is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board.~~

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

Filing—[Delivery by mail, in person or electronically. If filing by mail, it] FILING IS DEEMED COMPLETE UPON ONE OF THE FOLLOWING:

~~—(i) Filing 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.] A filing bearing only a private postmark is deemed filed as of the date of its receipt by the Board.~~

~~—(ii) When filing by common carrier, the date of filing is the date the document was delivered to the common carrier, as established by a document or other record prepared by the common carrier in the normal course of business. If the date of delivery to the common carrier cannot be determined by the common carrier's records, the date of filing will be the date of its receipt by the Board.~~

~~—(iii) If filing by hand delivery or electronically, the filing date is the Board's date of receipt.~~

(i) DELIVERY IN PERSON.

(ii) IF BY ELECTRONIC SUBMISSION, UPON RECEIPT AND IN A FORMAT AS PRESCRIBED BY THE DEPARTMENT AND PUBLISHED IN THE *PENNSYLVANIA BULLETIN* OR THE DEPARTMENT'S WEBSITE LOCATED AT WWW.DLI.STATE.PA.US.

(iii) IF BY MAIL, UPON DEPOSIT IN THE UNITED STATES MAIL, PROPERLY ADDRESSED, POSTAGE OR CHARGES PREPAID, AS EVIDENCED BY ONE OF THE FOLLOWING:

- a. UNITED STATES POSTAL SERVICE POSTMARK; OR
- b. UNITED STATES POSTAL SERVICE CERTIFICATE OF MAILING (USPS FORM 3817 OR OTHER SIMILAR UNITED STATES POSTAL SERVICE FORM FROM WHICH THE DATE OF DEPOSIT CAN BE VERIFIED), ENCLOSED WITH THE FILING OR SUBMITTED SEPARATELY TO THE DEPARTMENT.

(iv) AN APPEAL MAY BE DELIVERED BY A COMMON CARRIER OF PROPERTY WHICH IS SUBJECT TO THE AUTHORITY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION OR THE UNITED STATES NATIONAL SURFACE TRANSPORTATION BOARD. THE DATE OF FILING IS THE DATE THE DOCUMENT WAS DELIVERED TO THE COMMON CARRIER, AS ESTABLISHED BY A DOCUMENT OR OTHER RECORD PREPARED BY THE COMMON CARRIER IN THE NORMAL COURSE OF BUSINESS. IF THE DATE OF DELIVERY TO THE COMMON CARRIER CANNOT BE DETERMINED BY THE DOCUMENTS IN THE RECORD, THE DATE OF FILING WILL BE THE DATE OF ITS RECEIPT BY THE BOARD.

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

* * * * *

Subchapter B. APPEALS

§ 111.11. Content and form.

(a) An appeal or cross appeal shall be filed with the Board on a form provided by the Board. All references to forms mean paper forms or an electronic format prescribed by the Board and published in the *Pennsylvania Bulletin* or the Department's web site located at www.dli.state.pa.us. All forms must contain the following information:

(1) The name and address of the claimant, name and address of the defendant, date of the injury, type of petition, **[Bureau claim number,]** insurance carrier and circulation date of the decision at issue. **An appeal from a workers' compensation judge's decision is deemed to include all ~~claims~~ CLAIM NUMBERS, ~~disputes~~ DISPUTE NUMBERS and ~~petitions~~ PETITION NUMBERS referenced in the decision and order which are the subject of the appeal. This paragraph does not supersede the other requirements of this section.**

* * * * *

(6) A proof of service as specified in [§ 111.12(d)] § 111.12(e) (relating to filing, service and proof of service).

* * * * *

§ 111.12. Filing, service and proof of service.

(a) When filing **[by mail or in person] other than electronically**, an original **[and two copies]** of each appeal or cross-appeal shall be filed. **[Only the original]** The 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, **[the Board will obtain a copy of the judge's decision from the Office of Adjudication]** the petitioner shall follow the online procedures established by the Department ON ITS WEBSITE LOCATED AT WWW.DLI.STATE.PA.US.

* * * * *

§ 111.13. Processing of appeals and cross appeals.

(a) Upon receipt of an appeal or a cross appeal, the Board will acknowledge receipt to all parties. **[The date of acknowledgment will be 3 days subsequent to the date the acknowledgment is mailed.]**

* * * * *

§ 111.14. Motions to quash.

* * * * *

(c) A motion to quash shall be accompanied by a proof of service conforming to [§ 111.12(d)] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

* * * * *

(e) An original [and two copies of a] motion to quash shall be filed.

* * * * *

§ 111.16. Briefs: content and form and time for filing.

* * * * *

(e) Briefs, except as otherwise allowed, shall consist of the following items, separately and distinctly set forth:

* * * * *

(5) A proof of service as specified in [§ 111.12(d)] § 111.12(e) (relating to filing, service and proof of service) insofar as applicable.

(f) An original [and two copies of briefs] brief shall be filed.

* * * * *

Subchapter C. SUPERSEDEAS ON APPEAL TO THE BOARD AND COURTS

§ 111.21. Content and form.

(a) A request for supersedeas shall be filed as a separate petition from the appeal and be accompanied by the following:

(1) A copy of the decision **and order** of the judge or order and opinion of the Board from which the supersedeas is requested.

* * * * *

(7) A proof of service as specified in [§ 111.12(d)] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

* * * * *

§ 111.22. Filing.

* * * * *

(c) An original [and two copies of the] request for supersedeas shall be filed. [Only the original request for] The supersedeas request shall have attached a copy of the judge's decision and order or Board opinion and order from which the supersedeas is requested.

(d) A request for supersedeas shall be served on all the parties and be accompanied by a proof of service as specified in [§ 111.12(d)] § 111.12(e) (relating to filing, service and proof of service).

* * * * *

§ 111.23. Answers.

* * * * *

(b) An original [and two copies of an] answer shall be filed.

* * * * *

(d) An answer filed under this subsection shall be accompanied by a proof of service as specified in [§ 111.12(d)] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

* * * * *

§ 111.24. Disposition of request for supersedeas.

* * * * *

(b) The Board will rule on requests for supersedeas within [20 days of the date when the answer is due] 30 days of the date of receipt by the Board of the request, or the request shall be deemed denied.

* * * * *

Subchapter D. OTHER PETITIONS

§ 111.31. Applicability.

This subchapter applies to the following petitions or requests:

* * * * *

(6) A petition for rehearing or reconsideration under section 426 of the act (77 P. S. § 871).

* * * * *

§ 111.32. Form/content.

(a) Petitions and requests shall contain and be accompanied by the following:

* * * * *

(6) A proof of service as specified in [§ 111.12(d)] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

* * * * *

(c) An original [and two copies of petitions and requests] petition and request shall be filed.

* * * * *

§ 111.34. Answers to petitions.

* * * * *

(b) An original [and two copies of an] answer shall be filed.

* * * * *

(d) An answer filed shall be accompanied by a proof of service as specified in [§ 111.12(d)] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

* * * * *

PART VIII. BUREAU OF WORKERS' 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) ~~and Subchapter D~~ (relating to mandatory mediation; ~~and proceedings involving the UEGF~~) AND § 131.202 (RELATING TO FIRST HEARING INFORMATION AND STAY), upon motion of a party, agreement of all parties or upon the judge's own motion.

* * * * *

§ 131.5. Definitions.

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

* * * * *

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

Board—The Workers' Compensation Appeal Board.

[*Bureau*—The Bureau of Workers' Compensation of the Department.

Bureau record—Official copies of documents received by the Bureau, on forms prescribed by the Bureau, if forms prescribed by the Bureau are available, or official copies of documents received by the Bureau on forms prepared by a party if no forms prescribed by the Bureau are available, which record transactions between the parties and which are determined by the judge to pertain to the case.]

Challenge proceeding—A proceeding governed by § 131.50a (relating to employee request for special supersedeas hearing under section 413(c) and (d) of the act).

Claim petition—A petition filed with the Department under section 410 of the act (77 P. S. § 751).

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

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).

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

Department record—Official copies of documents received by the Department, on forms prescribed by the Department, if forms prescribed by the Department are available, or official copies of documents received by the Department on forms prepared by a party if forms prescribed by the Department are not available, which record transactions between the parties and which are determined by the judge to pertain to the case.

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

* * * * *

Party—A claimant, ~~employee~~, 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.

* * * * *

Supersedeas—A temporary stay affecting a workers' compensation case.

UEGF—Uninsured Employers Guaranty Fund—The special fund established under Article XVI of the act (77 P. S. §§ 2701—2708).

UEGF claim petition—A petition filed with the Department under section 1604 of the act (77 P. S. § 2704)

Voluntary mediation—A mediation conducted by a judge under § 131.59a (relating to voluntary mediation) upon the agreement of the contending parties and the judge.

~~(b) Subsection (a) supersedes 1 Pa. Code §§ 31.3 and 33.33 (relating to definitions; and effect of service upon an attorney).~~

Writing—Includes electronic communications in a format as prescribed by the Department.

(B) SUBSECTION (A) SUPERSEDES 1 PA. CODE §§ 31.3 AND 33.33 (RELATING TO DEFINITIONS; AND EFFECT OF SERVICE UPON AN ATTORNEY).

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:

* * * * *

(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.] If by mail, UPON DEPOSIT IN THE UNITED STATES MAIL, properly addressed, postage or charges prepaid, AS evidenced by ~~either~~ ONE of the following:

(i) ~~Upon deposit in the United States Mail, a~~ United States Postal Mark SERVICE POSTMARK.

(ii) **United States Postal Service Certificate of Mailing (USPS form 3817 or other similar United States Postal Service ~~Postal Service~~ form from which the date of deposit can be verified), enclosed with the filing or mailed SUBMITTED separately to the Department.**

(4) A FILING MAY BE DELIVERED BY A COMMON CARRIER OF PROPERTY WHICH IS SUBJECT TO THE AUTHORITY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION OR THE UNITED STATES NATIONAL SURFACE TRANSPORTATION BOARD. THE DATE OF FILING IS THE DATE THE DOCUMENT WAS DELIVERED TO THE COMMON CARRIER, AS ESTABLISHED BY A DOCUMENT OR OTHER RECORD PREPARED BY THE COMMON CARRIER IN THE NORMAL COURSE OF BUSINESS. IF THE DATE OF DELIVERY TO THE COMMON CARRIER CANNOT BE DETERMINED BY THE DOCUMENTS IN THE RECORD, THE DATE OF FILING WILL BE THE DATE OF ITS RECEIPT BY THE DEPARTMENT.

(b) Whenever service is required by this chapter, it is deemed complete upon one of the following:

* * * * *

(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).] Except as provided in § 131.81(b) (relating to subpoenas), if by mail, upon deposit in the United States Mail properly addressed, postage or charges prepaid and accompanied by proof of service.**

* * * * *

(e) Unless otherwise specifically provided in this chapter, whenever the filing or service is required to be made upon the **[Bureau] Department**, 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] an address as may be published in the *Pennsylvania Bulletin* ~~or~~ AND on the Department's web site located at www.dli.state.pa.us. Electronic filing and service on the **[Bureau] Department** shall be at the electronic address and in a format as prescribed by the **[Bureau] Department** and published in the *Pennsylvania Bulletin* ~~or~~ AND on the Department's web site located at www.dli.state.pa.us.**

* * * * *

Subchapter C. FORMAL PROCEEDINGS

GENERAL

§ 131.21. Identifying number.

(a) Pleadings, documents and other submittals filed in a proceeding shall be identified by an identifying number assigned by the [Bureau] Department.

* * * * *

PLEADINGS

§ 131.32. Petitions except petitions for joinder and challenge proceedings.

(a) Petitions shall be in the form prescribed by the [Bureau] Department.

(b) [If the petition is filed on a Bureau petition form, an original and the number of copies specified on the petition form shall be filed with the Bureau.] Any petition, filed in accordance with this chapter, shall be filed with the Department as prescribed by the form. If there is no applicable [Bureau] Department petition form available, an original of the petition shall be filed with the [Bureau] Department. The [Bureau] Department will serve a notice of assignment specifying the judge to whom the petition has been assigned. The notice will be served on the parties named in the petition.

(c) Concurrently with filing the petition with the [Bureau] Department, the moving party shall serve a copy of the petition on all other parties, including the insurance carrier, if the insurance carrier is known, and on the attorneys of all other parties, if the attorneys are known.

* * * * *

§ 131.33. Answers except answers to petitions for joinder and challenge proceedings.

(a) Answers to [all petitions except petitions for joinder and challenge proceedings] claim petitions shall be filed in accordance with section 416 of the act (77 P. S. § 821) within 20 days after the date of assignment [by the Bureau] to the judge. ~~Answers to all other petitions may be filed within 20 days after the date of assignment to the judge, except petitions for joinder, challenge proceedings and review of Utilization Review determinations.~~ EXCEPT PETITIONS FOR JOINDER UNDER § 131.36 (RELATING TO JOINDER), AND CHALLENGE PROCEEDINGS WHICH REQUIRE NO ANSWER, ANSWERS TO ALL OTHER PETITIONS MAY BE FILED WITHIN 20 DAYS AFTER THE DATE OF ASSIGNMENT TO THE JUDGE.

(b) [If the answer is filed on a Bureau answer form, an original and the number of copies specified on the answer form shall be filed with the judge to whom the petition has been assigned.] Any answer filed in accordance with this chapter shall be filed with the Department as prescribed on the answer form. If there is no applicable [Bureau]

Department answer form available, an original of the answer shall be filed with the [judge to whom the petition has been assigned] Department.

(c) Concurrently with filing the answer [with the judge], the responding party shall serve a copy of the answer on unrepresented parties and on counsel of record.

* * * * *

§ 131.36. Joinder.

* * * * *

(d) [An original and the number of copies specified on the Bureau] The petition for joinder form shall be filed with the Department no later than 20 days after the first hearing at which evidence is received regarding the reason for which joinder is sought, unless the time is extended by the judge for good cause shown.

[e] The petition for joinder shall be filed with the Bureau and an original of any answer shall be filed with the office of the judge to whom the case has been assigned.

[f] (e) An answer to a petition for joinder shall be filed in accordance with section 416 of the act (77 P. S. § 821) within 20 days after the date of assignment by the [Bureau] Department to the judge and may include a motion to strike.

[g] (f) A party filing a petition for joinder or an answer to it shall serve unrepresented parties and counsel of record.

[h] (g) A proof of service shall be attached to the petition for joinder or answer.

[i] (h) After joinder, the original petition shall be deemed amended to assert a claim of the claimant against an additional defendant. The additional defendant is liable to any other party as the judge orders. The additional defendant shall have the same rights and responsibilities under this chapter as the original defendant.

[j] (i) The judge may strike the petition for joinder, and the judge may order the severance or separate hearing of a claim presented therein, or as a result of the joinder.

[k] (j) The judge will issue an order when the motion to strike a petition for joinder is granted.

[l] (k) An order to strike a petition for joinder does not preclude or delay further proceedings before the judge.

[(m)] (l) Subsections [(a)—(l)] (a)—(k) supersede 1 Pa. Code §§ 31.5, 33.41, 33.42, 35.11, 35.35, 35.40, 35.48—35.51, 35.54 and 35.55 and also supersede 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

* * * * *

SUPERSEDEAS

§ 131.50. Return to work—modification or suspension.

* * * * *

(b) The insurer shall complete and file the form prescribed by the [Bureau] Department. The form shall be provided to the employee, employee's counsel, if known, and the [Bureau] Department within 7 days of the effective date of the suspension or modification of the workers' compensation benefits.

* * * * *

HEARING PROCEDURE

§ 131.52. First hearing procedures.

* * * * *

(e) The parties shall [provide the judge with] identify AND PROVIDE, IF NOT OTHERWISE ELECTRONICALLY AVAILABLE TO THE JUDGE, all documents required by law to be filed with the [Bureau] Department 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] Department or prior judges and which the judge deems relevant to the proceeding. The judge and the employee may not introduce the First Report of Injury into evidence.

* * * * *

§ 131.53a. Consolidated hearing procedure.

(a) [~~One day~~] ~~Except as otherwise provided in Subchapter D (relating to proceedings involving the UEGF), one day~~ ONE DAY trials or other consolidated hearing procedures may be scheduled and conducted pursuant to this chapter to the extent practical. The judge may waive or modify this chapter as may be appropriate and adopt and direct procedures which are fair and just for a determination of the issues consistent with the act.

* * * * *

§ 131.53b. Bifurcation and ~~summary~~ MOTIONS FOR disposition OF A PETITION.

* * * * *

[(b) Subsection (a) supersedes 1 Pa. Code §§ 35.180 and 35.225 (relating to action on motions; and interlocutory orders).]

(b) A motion which may result in ~~summary~~ disposition of ~~the claim~~ A PETITION may be filed at any time. A RESPONSE SHALL BE MADE WITHIN A TIME SPECIFIED BY THE JUDGE. The judge will issue an order granting or denying the motion, or will provide reasons why the motion will not be ruled upon, within ~~45~~ 30 days of ~~the motion's filing~~ WHEN THE RESPONSE IS DUE. If the motion will not be ruled upon, the judge will articulate in writing or on the record the ~~substantial and compelling~~ reasons for not ruling on the motion. Pendency of the motion will not operate as a stay.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.54, 35.55, 35.177—35.180 and 35.225.

§ 131.55. Attorney fees and costs.

(a) In all cases, claimant's counsel shall submit a copy of the fee agreement ~~or claim~~, and a copy of any statement or claim for disbursements, costs and expenses. No agreement or claim for fees or other disbursements, costs or expenses, by claimant's counsel shall be valid, and no payments shall be made pursuant thereto, unless approved for payment by the judge before whom the matter is heard or by the Board as provided by law. Except as otherwise approved, no further fee, cost or expense is to be charged.

[(a)] (b) Under section 440 of the act (77 P. S. § 996), in a disputed claim under the act when the employer or insurer has contested liability in whole or in part, the employee or a dependent, in whose favor the proceeding has been finally decided, will be awarded attorney fees and costs against the employer or insurer, unless the employer or insurer had a reasonable basis for contesting the petition.

[(b)] (c) Claimant's counsel may file an application for quantum meruit fees at or before the filing of proposed findings of fact, proposed conclusions of law and briefs, and if there are no proposed findings of fact, proposed conclusions of law or briefs requested, at or before the close of the record. The application shall detail the calculation of the fee requested, shall itemize the services rendered and time expended and shall address all factors enumerated in section 440 of the act [(77 P. S. § 996)] in support of the application.

[(c)] (d) Within 15 days after service of the application for quantum meruit fees, an opposing party may file a response to the application detailing the objections to the fee requested.

[(d)] (e) A decision on the fee award will be made based on the record of the case and, if filed, the application and response. If deemed appropriate by the judge, a hearing may be held and evidence presented.

[(e)] (f) The application and response will be made exhibits of record and shall be served on unrepresented parties and counsel of record as provided in § 131.34(a) (relating to other filings).

[(f)] (g) Subsections [(a)—(e)] (a)—(f) supersede 1 Pa. Code §§ 35.1 and 35.2 (relating to applications generally; and contents of applications).

* * * * *

§ 131.57. **Compromise and release agreements.**

* * * * *

(b) Proposed compromise and release agreements, including the stipulations of the parties, shall be recorded on a form prescribed by the [Bureau] Department. The parties may attach additional information to the form if circumstances so require.

* * * * *

§ 131.58. **Informal conferences.**

* * * * *

(c) The request for the informal conference shall be recorded on a form prescribed by the [Bureau] Department and filed with the judge to whom the pending petition has been assigned.

(d) If no petition is pending, a petition and corresponding request for the informal conference shall be filed with the [Bureau] Department on a form prescribed by the [Bureau] Department.

(e) The informal conference will be governed by the instructions and procedures specified on the form prescribed by the [Bureau] Department and by section 402.1 of the act [(77 P. S. § 711.1)].

* * * * *

§ 131.60. **Resolution hearings.**

* * * * *

(g) The judge conducting the resolution hearing will require proof that a petition has been filed with the [Bureau] Department under § 131.11 (relating to filing, service and proof of

service), and will make the proof a part of the record. Upon receiving the proof, the judge shall proceed with the hearing and circulate a final decision within 5 business days of the hearing.

* * * * *

EXCHANGE OF INFORMATION AND DEPOSITIONS OF DISCOVERY

§ 131.63. Time for taking oral depositions.

(a) An oral deposition may be taken at any time subsequent to 30 days after the date of [service] assignment of the petition by the [Bureau] Department.

* * * * *

SUBPOENAS

§ 131.81. Subpoenas.

(a) Upon written or **electronic** request of a party or counsel of record in a pending proceeding, the judge will issue a subpoena to compel the attendance of a witness or require the production of books, documents, records, CD ROMs, diskettes, other digital recordings or other things relevant to the proceeding at a scheduled hearing or deposition within the scope of, and scheduled under, this chapter. The party requesting a subpoena shall **complete the subpoena and** serve the judge with the original written request and shall serve a copy of the written request on unrepresented parties and counsel of record as provided in § 131.34(a) (relating to other filings).

~~(b) Any objections to a request for a subpoena shall be made within 7 calendar days of the date of the request. Subpoenas may not be served until the expiration of the 7 calendar day period~~ 10 DAYS FROM THE DATE OF ISSUANCE **unless waived by agreement of the parties.**

[(b)] (c) The party, counsel of record or their respective agents requesting a subpoena shall serve the subpoena THAT THE JUDGE HAS ISSUED upon the witness or person subpoenaed and upon opposing counsel.

* * * * *

[(c)] (d) Upon the filing of written objections by a person served with a subpoena or a party, the judge may, after notice to counsel of record and unrepresented parties, promptly quash or limit the scope of a subpoena issued or served.

[(d)] (e) If the person fails to appear, or has given notice of the intention not to appear, as required by a subpoena duly served, the judge will upon request of a party, communicate to the

witness the requirements of the act that the person so appear and advise the person of the enforcement provisions under section 436 of the act (77 P. S. § 992).

~~[(e)]~~ (f) Subsections ~~[(a)—(d)]~~ (a)—(e) supersede 1 Pa. Code §§ 35.139 and 35.142 (relating to fees of witnesses; and subpoenas).

STIPULATIONS

§ 131.91. Stipulations of fact.

* * * * *

(b) The judge may issue a decision based on stipulations of fact, if the judge is satisfied that:

(1) The stipulations of fact are fair and equitable to the parties involved.

(2) The claimant understands the stipulations of fact and the effect of the stipulations of fact on future payments of compensation and medical expenses.

(3) ~~A THE stipulation, which is dispositive of the case,~~ shall be signed and dated by the claimant, all counsel participating in the agreement and the employer, when unrepresented.

(4) The stipulation states which petitions are being resolved and which petitions are not being resolved.

(5) The stipulation states whether each petition should be withdrawn, granted or dismissed, and whether the parties are requesting an interlocutory or a final order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

* * * * *

Subchapter D. PROCEEDINGS INVOLVING THE UEGF

Sec.

131.201. Petitions.

131.202. First hearing information and stay.

131.203. Hearing procedures.

~~131.204. Waiver and modification of §§ 131.202 and 131.203.~~

~~131.205~~ 131.204. UEGF subpoenas and interrogatories.

§ 131.201. Petitions.

(a) All references to petitions in this subchapter are as defined under § 131.5 (relating to definitions).

(b) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

§ 131.202. First hearing information and stay.

(a) At the first hearing on a claim petition where no UEGF claim petition has been filed and there is either no insurer listed on the notice of assignment or the listed insurer files a motion to dismiss for lack of coverage, the judge will inform the claimant on the record of the existence of the UEGF and give the claimant information about the UEGF, as provided by the Office of Adjudication.

(b) If the claimant informs the judge on the record that he may wish to file a UEGF claim petition, the judge will stay the proceeding in the claim petition until 20 days after the assignment of the UEGF claim petition. The stay may not apply to the exchange of information referenced in § 131.61 (relating to exchange of information).

(c) If no UEGF claim petition is filed within 45 days of the first hearing, the claim petition will proceed against the uninsured employer.

(d) If the claimant informs the judge on the record that he does not wish to file a UEGF claim petition, testimony may be taken as directed by the judge.

(E) IN THE INTERESTS OF JUDICIAL ECONOMY AND DUE PROCESS TO HAVE ALL PARTIES JOINED AS SOON AS POSSIBLE, AND IN RECOGNITION OF THE UNIQUENESS OF THE UEGF FROM OTHER TYPES OF WORKERS' COMPENSATION LITIGATION, THIS SECTION CANNOT BE WAIVED OR MODIFIED, AS OTHERWISE PROVIDED IN §131.3 (RELATING TO WAIVER AND MODIFICATION OF RULES).

(e) (F) Subsections (a)—(d) (E) supersede 1 Pa. Code §§ 33.61, 35.18, 35.123—35.128, 35.187 and 35.188.

§ 131.203. Hearing procedures.

~~Section 131.53a (relating to consolidated hearing procedure) does not apply to UEGF claim petitions or any petitions consolidated with UEGF claim petitions under § 131.30 (relating to consolidation).~~ (A) IF THE UEGF REQUESTS LIVE TESTIMONY OF WITNESSES BEFORE THE JUDGE, THE JUDGE WILL SCHEDULE SUCH HEARINGS TO ACCOMMODATE THE REQUEST, UNLESS DENIED FOR GOOD CAUSE SHOWN AND STATED ON THE RECORD.

(B) SUBSECTION (A) SUPERSEDES 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.

~~§ 131.204. Waiver and modification of §§ 131.202 and 131.203.~~

~~(a) Sections 131.202 and 131.203 (relating to first hearing information and stay; and hearing procedures) cannot be waived or modified, as otherwise provided in § 131.3 (relating to waiver and modification of rules), unless the judge and all participating parties, including the UEGF, agree to a waiver or modification in writing or on the record.~~

~~(b) Subsection (a) supersedes 1 Pa. Code §§ 33.61 and 35.18 (relating to applications for waiver of formal requirements; and petitions for issuance, amendment, waiver or deletion of regulations).~~

§ ~~131.205.~~ 131.204. UEGF subpoenas and interrogatories.

(a) The judge may issue subpoenas, order testimony or compel the completion of written interrogatories with respect to the alleged uninsured employer's financial history, condition or ability to pay an award.

(b) The judge may compel the attendance of all parties at mediation.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.111—35.116, 35.137—35.147, 35.150, 35.161, 35.162, 35.187 and 35.188.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

TO: John F. Mizner
Chairman, Independent Regulatory Review Commission

FROM: Thomas J. Kuzma
Deputy Chief Counsel

DATE: 09-30-2014

RE: **Final-Form Regulation**
Department of Labor and Industry
34 Pa. Code Chapter 111
Special Rules of Administrative Practice and Procedure Before the
Workers' Compensation Appeal Board
34 Pa. Code Chapter 131
Special Rules of Administrative Practice and Procedure Before
Workers' Compensation Judges
Agency Number: 12-99

Below is a list of the names and addresses of commentators who requested additional information on the final-form regulation. Should you need additional information, please feel free to contact me.

Samuel R. Marshall
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
HARRISBURG, PENNSYLVANIA 17120

THE SECRETARY

September 30, 2014

John F. Mizner, Esquire
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

**Re: Final-Form Regulation
34 Pa. Code Chapter 111
Special Rules of Administrative Practice and Procedure Before the
Workers' Compensation Appeal Board
34 Pa. Code Chapter 131
Special Rules of Administrative Practice and Procedure Before
Workers' Compensation Judges
Agency Number: 12-99**

Dear Chairman Mizner:

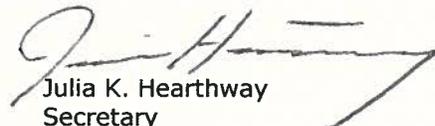
Enclosed is a final-form regulatory package consisting of a Face Sheet, Preamble, Annex A, Regulatory Analysis Form and a document listing the names and addresses of commentators who requested additional information on the above-mentioned final-form regulation.

The Department of Labor & Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office), submits this rulemaking, which amends 34 Pa. Code Chapters 111 and 131, to clarify and provide detailed guidance for practice and procedure before the Board and workers' compensation judges (judges), to provide additional guidance for the litigation of matters before the Board, the Office and judges, and to refine existing rules governing practice and procedure.

Questions should be directed as follows: (1) for the judges' rules in Chapter 131, to Elizabeth Crum, Director, Office of Adjudication, 1010 North 7th Street, Harrisburg, PA 17102, telephone no. (717) 783-4151, email address ecrum@pa.gov; (2) for the Board rules in Chapter 111, to Alfonso Frioni, Commissioner, Workers' Compensation Appeal Board, 901 N. 7th Street, 3rd Floor South, Harrisburg, PA 17102, telephone no. (412) 531-2680, email address alffrioni@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: Thomas C. Zipfel, Chief Counsel
Eugene Connell, Deputy Secretary Compensation & Insurance
Alfonso Frioni, Commissioner, Workers' Compensation Appeal Board
David Greineder, Director of Legislative Affairs
Eric Kratz, Policy Director
Elizabeth A. Crum, Director, Workers' Compensation Office of Adjudication
Thomas J. Kuzma, Deputy Chief Counsel, Bureau of Workers' Compensation

