

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

(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 proposed 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.

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

The Department proposes 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 proposed regulations 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 handled by 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 proposed regulations 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, most specifically due to the implementation of WCAIS. The proposed regulations will expedite the adjudication of workers' compensation claims, reduce paperwork requirements among litigants, and reduce expenses for litigants by incorporating technology into workers' compensation proceedings. Additionally, these proposed regulations aim to correct inefficiencies and diminish costs associated with litigation involving the UEGF.

(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 proposed regulations are likely to enhance the Commonwealth's competitive advantage because the Rules provide up-to-date guidance for litigation of workers' compensation matters. These proposed regulations 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.

Yes. The proposed regulations will amend 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 between 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 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 meetings were conducted for the purpose of reviewing the suggestions, and revising the proposed changes. The Committee reached a final consensus regarding the proposed revisions to the Rules at a meeting conducted on May 2, 2013.

(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 proposed 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 410 workers' compensation insurers, including the State Workers' Insurance Fund; approximately 750 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, regulations provide 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	\$ 74,951,000	\$ 81,990,000	\$ 81,896,000	\$ 76,028,000

(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 proposed 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 proposed amendments as the most appropriate and reasonable method for up-to-date guidance for litigation of workers' compensation matters.

Furthermore, the proposed 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: | within 30 days of publication of the proposed rulemaking in <i>Pa. Bulletin</i> |
| 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: | 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.

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><i>[Signature]</i></p> <p>BY:</p> <p>DEPUTY ATTORNEY GENERAL</p> <p>DATE OF APPROVAL</p> <p>JAN 30 2014</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>Department of Labor & Industry (AGENCY)</p> <p>DOCUMENT / FISCAL NOTE NO 12-99</p> <p>DATE OF ADOPTION:</p> <p>BY: <i>[Signature]</i></p> <p>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><i>[Signature]</i> <i>[Signature]</i></p> <p>DATE OF APPROVAL</p> <p>Deputy General Counsel JAN 06 2014</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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PROPOSED 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

PROPOSED RULEMAKING

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

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

Statutory Authority

The Department proposes these Rules under the authority contained in sections 401.1; 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).

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 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 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 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 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 meetings were conducted for the purpose of reviewing the suggestions, and revising the proposed changes. The Committee reached a final consensus regarding the proposed revisions to the Rules at a meeting conducted on May 2, 2013.

Purpose

These proposed amendments update existing Rules to promote efficiency and to address new technological and statutory changes. The present Rules 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 all 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 proposed amendments address these issues, and ensure that parties will continue to be advised of up-to-date Rules for practice and procedures before the Board, Office and judges.

Affected Persons

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

Fiscal Impact

There is no significant fiscal impact associated with this proposed rulemaking. However, the proposed amendments may provide the 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.

Summary of Proposed Rulemaking

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

Chapter 111. Special Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board.

The Department proposes to amend Chapter 111 to delete requirements that multiple copies of documents must be filed with the Board.

The Department proposes to amend:

Section 111.3 (relating to definitions) to clarify filing dates if filing by mail, common carrier, electronically or by hand-delivery. Adds definition for "common carrier."

Section 111.11 (relating to content and form) to clarify that an appeal of a judge's decision is deemed to include all claims, disputes and petitions referenced in the decision being appealed.

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

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

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

Section 111.16 (relating to briefs; content, form and time for filing) to delete the requirement that two copies of a brief must be filed with the original brief.

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

Section 111.24 (relating to disposition of request for supersedeas) 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) to clarify that Chapter 111, Subchapter D (Other Petitions) also applies to petitions for reconsideration under section 426 of the act (77 P.S. § 871).

Section 111.32 (relating to form and content of petitions and requests) to delete the requirement that two copies of a petition or request must be filed with the original petition or request.

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

Chapter 131: Special Rules for Administrative Practice and Procedure before Workers' Compensation Judges.

The Department, through this proposed rulemaking, proposes to add subchapter D (relating to proceedings involving the UEGF) to Chapter 131 to provide specific guidelines concerning these proceedings.

The Department further proposes to amend:

Section 131.3 (relating to waiver and modification of rules) to specify that the judge cannot waive or modify certain provisions in the new Subchapter D (relating to proceedings involving the UEGF).

Section 131.5 (relating to definitions), to include definitions for "Claim Petition "Board," "UEGF Claim Petition," and "UEGF." The Department proposes to amend the definition of "party" to include "employee." The Department proposes to add a definition of "writing" to clarify that a "writing" can include electronic communications. The Department also proposes to add a definition for "Board" to clarify that it refers to the "Workers' Compensation Appeal Board." The Department proposes to add a definition for "UEGF" and "UEGF Claim Petition".

Section 131.11 (relating to filing, service and proof of service) to clarify current filing and service requirements and to provide that a U.S. Postal Service Certificate of Mailing, USPS Form 3817 or similar form, can be used as evidence of the filing date.

Section 131.32 (relating to petitions except petitions for joinder and challenge proceedings) to provide that a party shall file forms as prescribed by the instructions on the form. If there is no form 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) to clarify requirements for filing answers to claim petitions and other petitions, except petitions for joinder, challenge proceedings and review of Utilization Review determinations.

Section 131.36 (relating to joinder) 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) to specify that, at the first hearing, parties must identify Department documents that are relevant to the claim or dispute, rather than provide actual copies of those documents, to the judge.

Section 131.53a (relating to consolidated hearing procedure) to provide that one day trials or other consolidated hearing procedures may not apply to proceedings involving the UEGF, as set out in subchapter D.

Section 131.53b (relating to bifurcation and summary disposition) to provide for and establish guidelines for handling motions for summary disposition.

Section 131.55 (relating to attorney fees and costs) 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 such agreement, statement or claim will be valid.

Section 131.63 (relating to time for taking oral depositions) 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) to provide that objections to a request for a subpoena must be made within 7 calendar days of the date of the request and prohibiting service of subpoenas prior to the expiration of this 7-day period, unless otherwise agreed to by the parties.

Section 131.91 (relating to stipulation of fact) to add a subsection requiring stipulations to be signed by the claimant, all counsel, and employer, if the employer is unrepresented. The Department further proposes to add subsections 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.

The Department proposes to add the following amendments under a new Subchapter D, "Proceedings involving the UEGF" to promote proper outcomes of these matters and efficient use of all parties' litigation resources through better coordination of the UEGF claim proceeding with the related claim proceeding.

Section 131.201 (relating to first hearing information and stay) to direct a judge to provide information about the UEGF to a claimant where no UEGF claim petition has been filed and there is no insurer listed on the notice of assignment or the insurer has filed a motion for dismissal based on non-coverage. If the claimant indicates an intention to file a UEGF claim petition, the judge is directed to stay the proceedings until 20 days after the Notice of Assignment to the UEGF. If the no UEGF claim petition is filed within 45 days, the claim petition will proceed.

Section 131.202 (relating to hearing procedures) to provide that §131.53a (relating to consolidated hearing procedure) does not apply to UEGF claim petitions or any matter consolidated with a UEGF claim petition.

Section 131.203 (relating to waiver and modification of Rules 131.201 and 131.202) to direct that a judge may not modify or waive Rule 131.201 (relating to the first hearing information and stay) and Rule 131.202 (relating to hearing procedures) unless all participating parties, including the judge and the UEGF, agree to the modification or waiver in writing or on the record.

Section 131.204 (relating to UEGF subpoenas and interrogatories) to authorize 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 all parties at mediation.

Reporting, Recordkeeping and Paperwork Requirements

The proposed amendments do not require the creation of any new forms. There are no other additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.

Effective Date

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on 2/10/14, the Department submitted a copy of this proposed rule-making and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. A copy of this material is available to the public upon request.

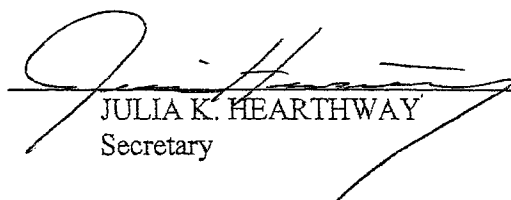
Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed

procedures for review, prior to final-form publication of the rules, by the Department, the General Assembly and the Governor of objections raised.

Contact Persons and Public Comment

The contact persons are: (1) with respect to the Judges' Rules, Elizabeth A. Crum, Director, Workers' Compensation Office of Adjudication; 1010 North Seventh Street, Harrisburg, PA 17102, phone number (717) 783-4151; and (2) with respect to the Board Rules, Alfonso Frioni, Workers' Compensation Appeal Board, 901 North Seventh Street, 3rd Floor South, Harrisburg PA 17102, phone number (412) 531-2680.

Interested parties may submit written comments to Elizabeth A. Crum, Director, Workers' Compensation Office of Adjudication, WCAB/WCJ Regulations – Comments, 1010 North Seventh Street, Harrisburg, PA 17102 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.



JULIA K. HEARTHWAY
Secretary

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:

* * * * *

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.] (1) By United States Mail. [If filing by mail, it] 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.

(2) By Common Carrier. 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.

(3) By Hand Delivery or Electronically. If filing by hand delivery or electronically, the filing date is the Board's date of receipt.

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Subchapter B. APPEALS

§ 111.11. Content and form.

* * * * *

(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, disputes and petitions referenced in the decision and order which are the subject of the appeal. This provision does not supersede the other requirements of this section.**

* * * * *

(6) A proof of service as specified in § 111.12 [(d)] (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.

* * * * *

§ 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)] (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)] (e) (relating to filing, service and proof of service) insofar as applicable.

(f) An original [and two copies of] brief[s] 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)] (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)] (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)] (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)] (e) (relating to filing, service and proof of service), insofar as applicable.

* * * * *

(c) An original [and two copies of] petition[s] and request[s] 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)](e) (relating to filing, service and proof of service), insofar as applicable.

* * * * *

PART VIII. BUREAU OF WORKER'S COMPENSATION

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

Subchapter A. GENERAL PROVISIONS

§ 131.3. Waiver and modification of rules.

(a) The judge may, for good cause, waive or modify a provision of this chapter, except as otherwise provided in § 131.59b(a) (relating to mandatory mediation) **and Subchapter D (relating to proceedings involving the UEGF)**, 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:

* * * * *

Board - The Workers' Compensation Appeal Board.

* * * * *

[*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.]

* * * * *

Claim Petition - A petition filed with the Department under Section 410 of the Act (77 P.S. § 751).

* * * * *

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 no forms prescribed by the Department are available, which record transactions between the parties and which are determined by the judge to pertain to the case.

* * * * *

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.

* * * * *

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)

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

* * * * *

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

* * * * *

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[.] : evidenced by (i) upon deposit in the United States Mail, a United States Postal Mark; or (ii) United States Postal Service Certificate of Mailing (USPS form 3817 or other similar USPS Postal Service form from which the date of deposit can be verified), enclosed with the filing or mailed separately to 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] 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] such address as may be published in the *Pennsylvania Bulletin* or 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 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.

* * * * *

§ 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] Any 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] in accordance with these rules, 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] claim petitions [except petitions for joinder and challenge proceedings] 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.

(b) [If the] Any 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] in accordance with these rules 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)] (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.

* * * * *

§ 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 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) Except as otherwise provided in Subchapter D (relating to proceedings involving the UEGF), [One] 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 disposition.

* * * * *

(b) A motion which may result in summary disposition of the claim may be filed at any time. The judge will issue an order granting or denying such motion, or will provide reasons why such motion will not be ruled upon, within 45 days of the motion's filing. If the motion will not be ruled upon, the judge shall 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.

[(b)] (c) Subsection (a) and (b) supersedes 1 Pa. Code §§ [35.180 and 35.225 (relating to action on motions; and interlocutory orders)] 35.54 -.55, 35.177 -.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)] (f) supersede I 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.

* * * * *

§ 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 shall** 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. No subpoenas shall be served until the expiration of the 7 calendar day period 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 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)]~~ (e) supersede I 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:

* * * * *

(3) A stipulation, which is dispositive of the case, must 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.

* * * * *

Subchapter D. PROCEEDINGS INVOLVING THE UEGF

§ 131.200. Petitions.

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

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

§ 131.201. 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 shall 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 shall 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) Subsections (a)-(d) supersede 1 Pa. Code §§ 35.123 -.128; 35.187 -.188.

§ 131.202. Hearing procedures.

Section 131.53a (relating to consolidated hearing procedure) shall not apply to UEGF claim petitions, or any petitions consolidated with UEGF claim petitions pursuant to § 131.30 (relating to consolidation).

§ 131.203. Waiver and modification of Rules 131.201 and 131.202.

(a) Sections 131.201 (relating to first hearing information and stay) and 131.202 (relating to hearing procedures) of this subchapter 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.

§ 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 - .116, 35.137- .147, 35.150, 35.161 - .162 and 35.187 - .188.



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

THE SECRETARY

February 10, 2014

David Sumner, Director
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Notice of Proposed Rulemaking
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 Director Sumner:

Enclosed is a proposed rulemaking package consisting of a Face Sheet, Preamble, Annex A and Regulatory Analysis Form.

The Department of Labor & Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office), is submitting this rulemaking 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.

Written comments, recommendations or objections 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 alfrioni@pa.gov.

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

Sincerely,

Julia Hearthway
Secretary

cc w/encl: Arthur F. McNulty, 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

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

I.D. NUMBER: 12-99

SUBJECT: SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE
BEFORE THE WORKERS' COMPENSATION APPEAL BOARD AND
WORKERS' COMPENSATION JUDGES

AGENCY: DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

2014 FEB 10 AM 11:59

RECEIVED
DWD

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON LABOR & INDUSTRY

MAJORITY CHAIR Mario M. Scavello

MINORITY CHAIR William F. Keller

SENATE COMMITTEE ON LABOR & INDUSTRY

MAJORITY CHAIR John R. Gordner

MINORITY CHAIR Christine M. Tartaglione

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

2/10/14 J. Hoyleman

2-10-14 William F. Keller

2-10-14 John R. Gordner

2/10/14 Christine M. Tartaglione

2/10/14 K. Cooper

2/10/2014 Courine In aunt