

Regulatory Analysis Form

(Completed by Promulgating Agency)

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

(1) Agency: Unemployment Compensation Board of Review

(2) Agency Number: 12

Identification Number: 112

INDEPENDENT REGULATORY

REVIEW COMMISSION
RECEIVED

MAR 1 2021

Independent Regulatory
Board Commission

IRRC Number: 3295

(3) PA Code Cite: 34 Pa. Code, Chapter 101, Subchapters A and C, Sections 101.2, 101.82

(4) Short Title: Time for filing appeal from determination of Department

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

Primary Contact: Brian Parr, UC Appeals System Administrator, UCBR – 717-787-5122 – RA-LIUCBR-REGCOMM@pa.gov

Secondary Contact: Janet Tarczy, Deputy Chief Counsel, OGC – 717-787-4186 – jtarczy@pa.gov

(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 existing regulation establishes the methods by which an unemployment compensation (UC) appeal (either a first-level appeal of a department determination or a second-level appeal of a UC referee decision, incorporated by reference in Regulation 34 Pa. Code § 101.102) may be filed and how the date of filing is determined for each filing method. The Unemployment Compensation Board of Review (UCBR) is amending Chapter 101, Subsection A, to define "Pennsylvania UC Claims System" and Subchapter C, Section 101.82(b) to clarify filing via e-mail and to permit filing of an appeal via the Department's new electronic "Pennsylvania UC Claims System."

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

This proposed rulemaking is issued under the authority provided in Section 203(d) of the UC Law, 43 P.S. § 763(d), which authorizes the Board to adopt, amend or rescind rules of procedure related to appeals. Section 506 of the Administrative Code of 1929 provides authority for the promulgation of rules and regulations for departmental administrative board and stating: “[T]he several departmental administrative boards and commissions, are hereby empowered to prescribe rules and regulations, not inconsistent with law, for the government of their respective departments, boards, or commissions . . . [and] the distribution and performance of their business. . . .” 71 P.S. § 186.

(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 to this existing regulation are not mandated by any federal or state law, court order or federal regulation. There are no relevant state or federal court decisions.

(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.

The regulation is needed to clarify the filing date of appeals filed by e-mail, and to differentiate those appeals from appeals filed through a new system. Pursuant to Sections 501(e) and 502 of the UC Law, 43 P.S. §§ 821(e), 822, parties have 15 days to file an appeal from a Department determination or referee decision. Section 101.82 establishes the methods by which an appeal may be filed and how the date of filing is determined for each filing method. Current Section 101.82(b) allows for filing by U.S. mail, common carrier, fax transmission, “electronic transmission other than fax transmission,” and personal delivery.

The Department is in the process of establishing a new electronic “Pennsylvania UC Claims System” which will allow parties to securely file and manage their UC claims via the Internet. It will also enable the parties to file appeals electronically via the system at no cost. These amendments to Section 101.82(b) are necessary to permit filing appeals via this online system, establish the date of filing, and allocate the accountability of errors by the electronic system to the Department. The amendment also clarifies filing via e-mail.

The proposed amendments to the regulation will eliminate “electronic transmission other than fax transmission” in paragraph (4) and replace it with “e-mail.” This amendment will simplify and clarify the filing method, benefitting the parties filing the appeals.

The proposed amendments will add a new paragraph (5) to establish filing via the “Pennsylvania UC Claims System.” The regulation is needed to permit filing via the electronic system. Allowing parties to file electronically will simplify the filing process, cut down on paper, and reduce filing errors such as mailing or e-mailing to an incorrect address, faxing to an incorrect or busy fax number, and missing or unreadable postmarks. It will also reduce costs to the appealing party in postage for mailing, certificate of mailing, certified mail receipt, or traveling to a retail establishment to fax or to a workforce investment office to file in person.

The proposed amendments will renumber personal delivery to a workforce investment office or the Board from paragraph (5) to paragraph (6).

The proposed amendments to paragraph (4) (filing an appeal via e-mail) and paragraph (5) (filing an appeal via the Pennsylvania UC Claims System) include a notation that the party will receive a confirmation of the filing either via e-mail or the electronic system, depending on the filing method. This will put the party on notice that, without such a confirmation, the appeal has not been filed and the party should take additional steps, such as appealing by one of the other available methods or contacting the Department or UCBR for assistance. This, in turn, will reduce the number of misdirected or untimely appeals, benefitting the parties. It also provides proof of the filing of the appeal, if necessary.

The proposed amendments to paragraph (5) (filing an appeal via the Pennsylvania UC Claims System) include an acknowledgement that if the filing of an appeal is delayed as a result of system or technological failure by the Pennsylvania UC Claims System, the date of filing will be redetermined via the adjudicatory process. Further, the Board will make available to its referees any relevant records regarding system outages. Unlike filing by fax or e-mail, this puts the accountability on the Department and the UCBR, not the party, if there is a failure in its system, thus benefitting the party. This will reduce the number of untimely appeals.

The number of people who will benefit will vary based upon the amount of appeals filed each year. In 2011 there were 103,217 appeals from a Department determination filed and 19,135 appeals from a referee decision filed for a total of 122,352. In 2019, there were 66,460 appeals from a Department determination filed and 7,430 appeals from a referee decision filed for a total of 73,890 appeals. All appeals that would be filed would be eligible to file through the new portal or by the traditional methods allowed by the regulation.

(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, none of the proposed amendments are more stringent than 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?

Of the other states in our region (Region 2: DE, MD, VA, DC, WV), DE, MD, and WV do not allow email or internet appeals. Virginia's "Administrative Code" allows parties to appeal in person, by mail, by fax, and by the Internet at its specified site. The date of filing is determined by the date received or the date of the postmark. 16VAC5-80-20; 16VAC5-80-30. The Virginia provisions do not discuss errors

in the electronic system or confirmations. The District of Columbia Office of Administrative Hearings Consolidated Rules allows parties to appeal in person, by mail, by fax, and by email. 1 DCMR § 2809.3. Filing date is the receipt date of the email if received by 5:00 p.m. 1 DCMR § 2841.10. Its regulations contain the same caveat for filing by email, placing the burden of error on the filing party. 1 DCMR § 2841.5. It does not have internet filing.

These amendments will not affect Pennsylvania's ability to compete with other states.

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

Yes, 34 Pa. Code § 101.82 (relating to time for filing appeal from determination of Department) is referenced in 34 Pa. Code § 101.102 (relating to form and filing of application for further appeal from decision of referee). Consequently, these amendments will apply to both appeals from determinations of the Department and appeals from referee decisions.

These amendments will not affect other state agencies.

(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 March 2020, the Department provided a summary of the proposed regulatory changes by email to a group of valued stakeholders and asked them to provide comments. Those stakeholders included:

1. Geoffrey Moomaw, President, Interstate Tax Service
2. Brian Phillips, Executive Assistant to the President, PA AFL-CIO
3. Alex Halper, Director, Government Affairs, PA Chamber of Commerce
4. Barney Oursler, Co-founder, Mon Valley Unemployment Project
5. Rebecca Oyler, Legislative Director, National Federation of Independent Business
6. Sharon Dietrich, Managing Attorney and Litigation Director, Community Legal Services
7. Julia Simon-Mishel, Supervising Attorney of the Unemployment Compensation Unit, Philadelphia Legal Assistance
8. John Dodds, Director, Philadelphia Unemployed Project
9. Irwin Aronson, PA Building Trades and PA AFL-CIO
10. John Stember, Board Chairman, Mon Valley Unemployed Committee;
12. Joseph Fogarty, Equifax Manager UI Program Relationship.

The Department also discussed this proposed regulatory package with additional stakeholders including Community Legal Services. The Board did not receive any substantive comments regarding the proposed regulatory package.

(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?

This regulation will affect any employee who has filed a claim for UC benefits, received an adverse decision, and wishes to file an appeal. It will also affect all employers with a former or current employee who has filed a claim for UC benefits, received an adverse decision, and wishes to file an appeal. The amendments to this regulation give these parties an additional method by which to file an appeal, inform them they will receive a confirmation of the appeal if filed by e-mail or the Pennsylvania UC Claims System, and confer accountability on the Department and the UCBR for delays caused by failure of the Pennsylvania UC Claims System. The amendments should make it easier for the parties to file appeals and to ensure that the appeal was properly filed.

The number of parties that will be affected by the regulation will vary based upon the amount of appeals filed each year. In 2011 there were 103,217 lower authority appeals filed and 19,135 higher authority appeals filed for a total of 122,352. In 2019, there were 66,460 lower authority appeals filed and 7,430 higher authority appeals filed for a total of 73,890 appeals. All appeals that would be filed would be eligible to file through the Pennsylvania UC Claims System or by the traditional methods allowed by the regulation.

(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.

Any employee who has filed a claim for UC benefits, received an adverse decision, and wishes to file an appeal is required to comply with the regulation regarding filing methods. Any employer who has a former or current employee who has filed a claim for UC benefits, received an adverse decision, and wishes to file an appeal is required to comply with the regulation regarding filing methods. However, six filing methods are permitted, and no party is required to use any one method.

The number of people who will be required to comply with this regulation will vary based upon the amount of appeals filed each year. In 2011 there were 103,217 lower authority appeals filed and 19,135 higher authority appeals filed for a total of 122,352. In 2019, there were 66,460 lower authority appeals filed and 7,430 higher authority appeals filed for a total of 73,890 appeals. All appeals that would be filed would be eligible to file through the new Pennsylvania UC Claims System or by the traditional methods allowed by the regulation.

(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.

Financially, the cost of filing an appeal by e-mail or electronically is none, assuming the party already has Internet access. The Pennsylvania UC Claims System will also be accessible via a mobile device. Absent Internet access, a party may go to a local workforce investment office, currently known as a CareerLink®, to utilize Department computers at no cost. Libraries also often offer computer access at no cost. Filing an appeal by e-mail or the Pennsylvania UC Claims System eliminates the cost of postage, certificate of mailing, certified mail receipt, and traveling to a retail store to file by fax or to a workforce investment office to file in person. Filing electronically also cuts down on the use and cost of paper and ink.

The regulation will make it easier for parties to appeal a Department determination or referee decision thus giving more parties access to the appeal system.

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

The benefit of the amendments is to expand the methods by which an appeal can be filed, *i.e.*, through the Pennsylvania UC Claims System. The amendments also inform the parties that confirmation of the filing of the appeal by e-mail or the Pennsylvania UC Claims System will be provided, so the party can ensure the filing was successful. Any system or technological failure of the Pennsylvania UC Claims System will be borne by the Department and not the party. There is no cost to the parties (outside Internet access) and no adverse effects are anticipated.

(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.

There is no cost to the regulated community. This regulation is not cost or savings driven. The purpose of this regulation is to leverage the technology of the Department and Board's new electronic Pennsylvania UC Claims System and to make appealing a Department determination or referee decision easier.

(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.

There is no cost to local governments. This regulation is not cost or savings driven. The purpose of this

regulation is to leverage the technology of the Department's new electronic Pennsylvania UC Claims System and to make appealing a Department determination or referee decision easier.

(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.

There is no additional cost to state government as a direct result of this regulation. This regulation is not cost or savings driven. The purpose of this regulation is to leverage the technology of the Department's new electronic Pennsylvania UC Claims System and to make appealing a Department determination or referee decision easier.

(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.

There are no additional procedures required from any group listed in (19)-(21) above.

(22a) Are forms required for implementation of the regulation?

No. Appeal forms are not required to appeal a Department determination or referee decision. Appeal forms may be used and presently exist. Form UC-47, Appeal Instructions, has been revised for implementation of the Pennsylvania UC Claims System and in anticipation of the new regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

An appeal form is not required to perfect an appeal. However, sample copies of the updated forms that

are provided to the parties are attached.

(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 SFY 2020-21	FY +1 SFY 21-22	FY +2 SFY 22-23	FY +3 SFY 23-24	FY +4 SFY 24-25	FY +5 SFY 25-26
SAVINGS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

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

Program	FY -3 SFY 17-18	FY -2 SFY 18-19	FY -1 SFY 19-20	Current FY SFY 19-20
UCBR	\$16,737,120.78	\$16,779,607.76	\$16,766,724.36	As of 12/31/2020 \$8,360,152.64

(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.

No adverse impact on small businesses is anticipated.

(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.

No special provisions have been developed to meet particular needs of specific groups. The regulation provides maximum flexibility to appealing parties, so that they may choose the method that best suits their needs and is most readily available. The system will be accessible via a mobile device. Those without Internet access can visit a local workforce investment office, known as a CareerLink®, to use the Department's computers at no cost. Libraries and other retail establishments often offer free Internet access. Also, the existing methods of appealing a UC determination or referee decision will continue to be allowed.

(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.

No alternative regulatory provisions were considered. This regulation represents the least burdensome alternative for filing appeals.

(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 performance 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.

Because there is no adverse impact or additional requirements on small business, less stringent standards are not necessary.

(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.

Data was not used as a basis for this regulation. This regulation is due to the modernization of the Department and Board's new electronic Pennsylvania UC Claims System that is underway. The regulation is not data driven.

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

- | | |
|---|--|
| A. The length of the public comment period: | 30 days |
| B. The date or dates on which any public meetings or hearings will be held: | n/a |
| C. The expected date of delivery of the final-form regulation: | <u>5/2021</u> |
| D. The expected effective date of the final-form regulation: | The amendments will become effective upon publication of final-form rulemaking in the <i>Pennsylvania Bulletin</i> on the date of implementation of the Pennsylvania UC Claims System. |
| E. The expected date by which compliance with the final-form regulation will be required: | The amendments will become effective upon publication of final-form rulemaking in the <i>Pennsylvania Bulletin</i> on the date of implementation of the Pennsylvania UC Claims System. |
| F. The expected 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 evaluation of the effectiveness of the regulations after its implementation will be monitored with existing weekly and monthly reports and quarterly quality reviews as well as receiving feedback when providing direct service to participants in the UC system.

APPEAL INSTRUCTIONS

Under Section 501(e) of the Pennsylvania Unemployment Compensation Law, this determination becomes final unless you file an appeal. You have 15 calendar days after the mailing date on the determination to file a timely appeal. However, if the 15th day is a Saturday, Sunday or legal holiday, you may file a timely appeal on the next business day. If your appeal is not filed on time, the UC Board of Review will determine if you had good cause for filing a late appeal.

Your appeal must include the claimant's name; address; Social Security number; the date of the determination being appealed; determination number (if known); the reason for the appeal; and the name and address of the individual filing the appeal.

You may file your appeal:

- online on the Department Electronic Unemployment System;
- by completing the Petition for Appeal form (included with your determination), and mailing, faxing or emailing the petition for appeal to the department;
- by mailing, faxing or emailing an appeal letter to the department; or,
- in person at a PA CareerLink®

If you appeal online:

- The filing date is the date recorded by the Department Electronic Unemployment System.
- Log in to your account at [##SystemURL##], from your dashboard under "Unemployment Services," click on "Appeals" and then click on the tab for "Determinations" to locate the determination you wish to appeal. Click on the action "File Appeal" and proceed to complete the required entries.
- The Department Electronic Unemployment System will acknowledge that your appeal has been successfully filed and you will be able to immediately view your appeal status through the "Appeals Filed" tab on your online account. If your appeal has not been acknowledged and you cannot view it under "Appeals Filed," contact the UC Service Center.
- Online filing is the most efficient and preferred method of filing an appeal.
- You must file a separate appeal for each determination you wish to appeal. For example, if you were issued a determination that disqualifies benefits and a determination that establishes an overpayment, and wish to appeal both determinations, you must file a separate appeal to each determination, for a total of two appeals.

If you appeal by mail:

- U.S. Postal Service: The filing date is the U.S. Postal Service postmark date, the date of a Postal Service certificate of mailing or the date of a Postal Service certified mail receipt. In the absence of these dates, the filing date is the date of a postage meter mark. In the absence of all the above dates, the filing date is the date the department receives the appeal.
- Common carrier: The filing date is the date the envelope is delivered to a common carrier. If that date cannot be determined, the filing date is the date the department receives the appeal.
- The mailing address for your appeal is:

[##MailProcessingUnit##
][##MailingAddress1##]
[##MailingAddress2##]
[##CityStateZip##]

Auxiliary aids and services are available upon request to individuals with disabilities.

Equal Opportunity Employer/Program



If you appeal by fax:

- The filing date is the date imprinted by the receiving fax machine. If the receiving machine does not provide a date, the filing date is the date imprinted by the sending fax machine. If neither machine provides a date, the filing date is the date the appeal is received by the department.
- Keep a copy of the successful fax transmission report for your records.
- The fax number for your appeal is: [##ServiceCenterFaxNumber##]

If you appeal by electronic mail (email):

- If you file your appeal by email, the appeal is filed on the date of receipt recorded by the department's electronic transmission system.
- You are responsible for using the proper format and email address
- You should receive a confirmation email that your appeal was received. Keep this confirmation email for your records. If you don't receive a confirmation email, check that you sent the email to the correct address. If you did, contact the UC Service Center.
- The email address for your appeal is: ucappeals@pa.gov

If you appeal in person at a PA CareerLink®:

- The filing date is the date you deliver the appeal to the PA CareerLink® during regular business hours. The PA CareerLink® will forward your appeal to the UC Service Center.
- Keep a date-stamped copy of the appeal for your records.
- You cannot file an in-person appeal at the UC Service Center.

IMPORTANT:

- **If you file your appeal by fax or email, you accept the risk of delay, disruption or interruption of electronic signals, which may affect the timeliness of the appeal.**
- **If you remain partially or fully unemployed while an appeal concerning your eligibility is pending, continue to file your weekly claims for benefits. If the appeal is decided in your favor, only benefits for the weeks you claimed will be released for payment.**



PETITION FOR APPEAL

IMPORTANT!

READ THE INFORMATION ON THE LAST PAGE OF THIS FORM BEFORE FILING AN APPEAL

If you want to appeal the notice of determination, you must file by the last date to appeal as indicated on the determination. You may file an appeal electronically via your account on the PA UC Benefits System website at [##SystemURL##]. This is the most efficient and preferred method of filing. You may also file the appeal by fax, email or mail by completing the form below and returning this form in accordance with the appeal instructions enclosed with the notice of determination.

FOLLOW THE APPEAL INSTRUCTIONS CAREFULLY!

DATE OF DETERMINATION BEING APPEALED [##DetDate##]

CLAIMANT'S SOCIAL SECURITY NO. XXX-XX-[##SSNL4Digits##]

DETERMINATION NUMBER: [##DETERMNUM##]

CLAIMANT'S TELEPHONE NO. (XXX) XXX-XXXX

EMPLOYER'S TELEPHONE NO. (XXX) XXX-XXXX

CLAIMANT'S NAME AND ADDRESS

[##Claimant##]

[##ClaimantAddress1##]

[##ClaimantAddress2##]

[##ClaimantCityStateZIP##]

EMPLOYER'S NAME AND MAILING ADDRESS

[##Employer##]

[##EmployerAddress1##]

[##EmployerAddress2##]

[##EmployerCityStateZIP##]

LOCATION WHERE THE CLAIMANT LAST WORKED
(IF DIFFERENT FROM EMPLOYER ADDRESS
ABOVE)

EMPLOYER'S ACCOUNT NO. [##EAN##]

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



REASON(S) FOR DISAGREEING WITH THE DETERMINATION AND FILING THIS APPEAL ARE:

I certify that all information I have provided in this document is correct and complete. I acknowledge that false statements in this document are punishable pursuant to 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

NAME OF PERSON FILING APPEAL _____

DO YOU NEED ASSISTANCE?

¿NECESITA AYUDA?

Any interested party at an appeal hearing before the Unemployment Compensation Board of Review or one of the Board's referees must be able to deal effectively with both written evidence and oral testimony.

If you are a person who:

- Requires assistance because of a disability with hearing, speech and/or vision, or
- Needs an interpreter for your own language other than English,

you must properly notify the Board about this. The Board is responsible to provide an appropriate device or qualified interpreter whose credentials are certified for quasi-judicial proceedings and the Board covers the cost required to provide this assistance.

If you are in either of these situations, please enter the information when you file your appeal online at [##SYSTEMURL##] or TYPE or PRINT to complete the section below and submit it with your appeal form.

I require an interpreter for: ___ Spanish

Yo necesito un interprete por: ___ Espanol

___ Another spoken language (please specify): _____



I require assistance to participate in the hearing because of disability with:

_____Hearing_____Speech_____Vision _____Other _____

I require an interpreter to participate in the hearing for:

_____American Sign Language(ASL) _____Oral _____Signed English
_____Other (please specify) _____

I require the following device to participate in the hearing:

_____Assistive listening device (ALD) (please specify) _____
_____Other (please specify) _____

I am requesting to participate in the hearing by telephone for the following reason:

_____Distance from site of hearing_____Current employment _____Transportation
_____Health reason _____Other compelling reasons (please specify) _____

Participation by telephone will be decided by the appeals referee and will only be granted for compelling reasons. The following details explain why my request to appear by telephone should be considered compelling:

INFORMATION ABOUT THIS FORM AND THE APPEAL PROCESS

What is the purpose of this form?

This is an appeal form. If you disagree with the UC Service Center determination and decide to appeal, please read your determination and the appeal instructions for information on where to file your appeal. You may file an appeal electronically via your account on the PA UC Benefits System. This is the most efficient and preferred method of filing. Simply log on to [##SYSTEMURL##] to access your claim and click on Unemployment Services > Appeals > Determinations > File Appeal to begin the process. If you wish to file by fax, email or mail, you may use this form to appeal the enclosed notice of determination. If you file an appeal, a copy of the completed form will be sent to all parties.

Do I qualify to file an appeal?

If you are the claimant, you may appeal if the determination denies UC benefits and you think you should be eligible for benefits. If you are the employer, you may appeal if the determination grants benefits and you think the claimant should be ineligible or eligible for fewer benefits, or if the determination denies your request for relief from charges. You must indicate your reason for filing an appeal.

What do I do if I have questions?

Do not use this form to ask questions about the enclosed determination or UC benefits. This form should be used only to file an appeal. If you have any questions about UC, call the UC Service Center at 1-888-313-7284. If you would like to ask a question before you decide whether to appeal, call promptly because an appeal must be filed within 15 days after the determination is issued.

What happens if I file an appeal?

After your appeal is received and processed, an Acknowledgement of UC Appeal will be mailed to you as notification that it has been processed.

If an appeal is filed, a UC referee will conduct a hearing where the parties and their witnesses can give testimony under oath. The parties may arrange for witnesses with firsthand knowledge of the facts to participate in the hearing. Firsthand knowledge refers to something which the witness actually saw or heard, as distinguished from something learned from some other person or source. Information learned secondhand might not, depending on the circumstances, be considered at the hearing.

If the hearing concerns the claimant's separation from employment, and the claimant quit his or her job, the claimant will be ineligible for benefits unless the claimant proves that there was a necessitous and compelling reason to voluntarily leave work. If the employer discharged the claimant, the claimant's separation will not be disqualifying unless the employer proves that the claimant was dismissed for willful misconduct or the claimant's unemployment is his or her fault.

At the hearing, the referee will try to obtain testimony about all the facts relevant to the appeal. The referee will issue a decision after the hearing and mail a copy to the parties.

May I have legal representation?

Whether you are the claimant or the employer, you may file your own appeal and represent yourself throughout the appeal process, or you may have an attorney or any other advocate represent you. If you are the claimant and you qualify, free legal assistance may be available from the legal services organization serving your area, your local bar association, or a law school clinic.

Should I file claims while an appeal is pending?

Yes. If the employer appeals a determination granting you benefits, you can receive benefits while the appeal is pending. If you appeal a determination denying benefits and the appeal is decided in your favor, only benefits for weeks that you claimed while the appeal was pending can be paid. Therefore, if you remain partially or fully unemployed while an appeal concerning your eligibility is pending, continue to file claims for benefits. UC claims can be filed by logging in to your account on the PA UC Benefits System website at [##SystemURL##]. If you are unable to file, your UC Service Center can assist you by calling 1-888-313-7284.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED
MAR 1 2021
Independent Regulatory
Review Commission

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Pennsylvania Office of Attorney General, ou=Chief Deputy Attorney General, email=amy@attorneygeneral.gov, c=US Date: 2021.02.23 11:49:36 -0500</small></p> <p>BY: <u>Amy M. Elliott</u> (DEPUTY ATTORNEY GENERAL)</p> <p><u>2/23/2021</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Department of Labor & Industry</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>12-112</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Richard W. Bloomingdale</u> Richard W. Bloomingdale</p> <p>Title: <u>Chairman</u></p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>Marisa H. Z. Lehr</u></p> <p><u>2/1/2021</u> DATE OF APPROVAL</p> <p><u>Deputy General Counsel</u> (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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Title 34. Labor and Industry

Part VI. Unemployment Compensation Board of Review

Chapter 101. General Requirements

PROPOSED RULEMAKING

Title 34 Labor and Industry Appeals from Determinations of Department 34 Pa. Code, Chapter 101

In accordance with Section 203(d) of the Pennsylvania Unemployment Compensation Law (UC Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 763(d), and Section 506 of The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 186, the Unemployment Compensation Board of Review (Board) is submitting proposed rulemaking for the purpose of providing additional means for the filing of electronic appeals.

The Board proposes the following amendments to Sections 101.2 and 101.82(b), 34 Pa. Code §§ 101.2 and 101.82(b), as set forth in Annex A.

Statutory Authority

This proposed rulemaking is issued under the authority provided in Section 203(d) of the UC Law, 43 P.S. § 763(d), which authorizes the Board to adopt, amend or rescind rules of procedure related to appeals. Section 506 of the Administrative Code of 1929 provides authority for the promulgation of rules and regulations for departmental administrative boards, stating: “[T]he several departmental administrative boards and commissions, are hereby empowered to prescribe rules and regulations, not inconsistent with law, for the government of their respective departments, boards, or commissions . . . [and] the distribution and performance of their business. . . .” 71 P.S. § 186.

Background

The Board is a departmental administrative board pursuant to section 203(c) of the UC Law, which provides that it “shall have all the powers and perform all the duties generally vested in, and imposed upon, departmental administrative boards and commissions” by the Administrative Code of 1929. 43 P.S. § 763(c). It is established under sections 202, 207.1 and 503 of the Administrative Code of 1929 (71 P.S. §§ 62, 67.1 and 183). The Board voted to adopt the proposed amendments in Annex A on January 6, 2021.

Under Sections 501(e) and 502 of the UC Law, 43 P.S. §§ 821(e), 822, parties have 15 days to file an appeal from a Department determination or referee decision. Section 101.82 establishes the methods by which an appeal may be filed and how the date of filing is determined for each filing method. The regulation was last amended on September 20, 2003, to expand the methods of filing beyond only personal delivery or delivery by U.S. mail. Existing section 101.82(b) allows for filing by U.S. mail, common carrier, fax transmission, “electronic transmission other than fax transmission,” and personal delivery. It also determines the date of

filing by each method, including by postage meter mark if there is no U.S. postmark on a mailed appeal.

The Department is in the process of establishing a new electronic "Pennsylvania UC Claims System" that will allow parties to securely file and manage unemployment compensation (UC) claims online. It will also enable the parties to file appeals electronically via the system at no cost. These amendments to the regulation are necessary to permit filing appeals via this online system, establish the date of filing, and allocate the accountability of errors by the electronic system to the Department. The amendment also distinguishes filing via e-mail from filing through the new system.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

On March 6, 2020, the Board sent an email explaining the amendments to the regulations and soliciting comments by April 10, 2020 to Geoffrey Moomaw, President, Interstate Tax Service; Brian Phillips, Executive Assistant to the President, PA AFL-CIO; Alex Halper, Director, Government Affairs, PA Chamber of Commerce; Barney Oursler, Co-founder, Mon Valley Unemployment Project; Rebecca Oyler, Legislative Director, National Federation of Independent Business; Sharon Dietrich, Managing Attorney and Litigation Director, Community Legal Services; Julia Simon-Mishel, Supervising Attorney of the Unemployment Compensation Unit, Philadelphia Legal Assistance; John Dodds, Director, Philadelphia Unemployed Project; Irwin Aronson, PA Building Trades and PA AFL-CIO; and John Stember, Board Chairman, Mon Valley Unemployed Committee. On March 12, 2020, UCBR sent the same email to Joseph Fogarty, Equifax Manager UI Program Relationship. No comments were received from any of the recipients.

Purpose

This proposed regulation amends the existing regulation establishing methods by which a party can file an appeal. It simplifies and clarifies e-mail appeals and establishes appeals filed via the Pennsylvania UC Claims System.

Summary of Proposed Rulemaking

34 Pa. Code § 101.2

This section is amended to add a definition of "Pennsylvania UC Claims System."

34 Pa. Code § 101.82(b)(4)

This amendment to this paragraph eliminates "electronic transmission other than fax transmission" and replaces it with "e-mail." This will simplify and clarify that the subsection is

only applicable to electronic mail communication, as opposed to other forms of electronic communication. It also provides that the party will receive a confirmation e-mail that the appeal has been received. This effectively places the party on notice that if the confirmation e-mail is not received, the appeal has not been filed, prompting additional action by the party. This should reduce the number of untimely or misdirected appeals.

34 Pa. Code § 101.82(b)(5)

This amendment establishes the filing of an appeal via the Department's new Pennsylvania UC Claims System. The amendment provides that the party will receive a confirmation from the system that the appeal has been received. This effectively places the party on notice that if the confirmation is not received, the appeal has not been filed, prompting additional action by the party. This should reduce the number of untimely or misfiled appeals. Additionally, the amendment provides that if there is a delay in transmission due to system or technological failure of the Pennsylvania UC Claims System, the date of filing will be redetermined via the adjudicatory process. Further, the Board will make available to its referees any relevant records regarding system outages. This places the accountability on the Department and Board, rather than the party.

34 Pa. Code § 101.82(b)(6)

Filing an appeal by personal delivery to a workforce investment office or the Board has been retained as an option, but renumbered from paragraph (5) to paragraph (6) to accommodate the new paragraph (5), regarding the Pennsylvania UC Claims System.

Affected Persons

This proposed regulation will affect all Pennsylvania employees who have filed claims for UC benefits, received adverse decisions, and who wish to file appeals; and all employers with former or current employees who have filed claims for UC benefits, received adverse decisions, and who wish to file appeals.

Fiscal Impact

These proposed amendments do not have any appreciable fiscal impact.

Reporting, Recordkeeping and Paperwork Requirements

These regulations will not require the creation of new forms or reporting requirements.

Sunset Date

A sunset date is not appropriate for this regulation. However, the Board will continue to monitor its effectiveness.

Effective Date

This proposed amendment will become effective upon publication in the *Pennsylvania Bulletin* on the date of implementation of the Pennsylvania UC Claims System.

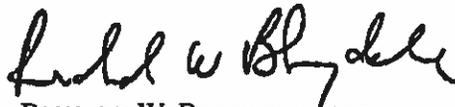
Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Brian Parr, UC Appeals System Administrator, Unemployment Compensation Board of Review, 651 Boas Street, Room 1114, Harrisburg, Pennsylvania, 17121, (717) 787-5122, or by electronic mail to RA-LIUCBR-REGCOMM@pa.gov within 30 days of publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, 71 P.S. § 745.5(a), on March 1, 2021, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Labor and Industry Committees. 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 shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.


RICHARD W. BLOOMINGDALE
Chairman

Fiscal Note:

Annex A

Title 34. Labor and Industry
Part VI. Unemployment Compensation Board of Review
Chapter 101. General Requirements

Subchapter A. General Provisions

§ 101.2. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Party – The Department, the claimant, the last employer of the claimant and another employer affected by the appeal proceedings.

Pennsylvania UC Claims System – The Department’s information technology system of record for the filing, management and processing of unemployment compensation claims and appeals.

Personal Delivery – Delivery by or on behalf of a party that is not enumerated in § 101.82(b)(1)-(4) (relating to time for filing appeal from determination of Department) where a person personally files the appeal at a Board office or workforce investment office.

* * * * *

Subchapter C. Appeals form Determinations of Department

§ 101.82. Time for filing appeal from determination of Department.

* * * * *

(b) A party may file a written appeal by any of the following methods:

* * * * *

(4) *Electronic [transmission other than fax transmission] **mail (e-mail)***. The date of filing is the receipt date recorded by the Department appeal office or the Board’s [electronic transmission] **e-mail** system, if the [electronic record] **e-mail message** is in a form capable of being processed by that system. **Filing will be acknowledged by a confirmation e-mail.** A party filing by [electronic transmission] **e-mail** shall comply with Department instructions concerning format. A party filing an appeal by [electronic transmission] **e-mail** is responsible for using the proper format and for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

(5) Pennsylvania UC Claims System. The date of filing is the receipt date recorded by the Pennsylvania UC Claims System. Filing will be acknowledged by a confirmation from the Pennsylvania UC Claims System. If the filing is delayed as a result of system or technological failure of the Pennsylvania UC Claims System, the date of filing will be redetermined through the adjudicatory process. The Board will make available to the Referee relevant Department records regarding system outages where a party alleges a late filing due to system or technological failure.

[(5)] **(6) Personal delivery to a workforce investment office or the Board.** The filing date will be the date the appeal was personally delivered to the workforce investment office or the Board during its normal business hours.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY

March 1, 2021

George D. Bedwick, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Notice of Proposed Rulemaking
Title 34. Labor and Industry
Part VI. Unemployment Compensation Board of Review
Chapter 101. General Requirements

Dear Chairman Bedwick:

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

The Unemployment Compensation Board of Review is submitting this rulemaking to amend Part VI, Chapter 101 of 34 Pa. Code to provide additional means for the filing of electronic appeals.

Written comments, recommendations or objections should be directed to Brian Parr, UC Appeals System Administrator, 651 Boas Street, 11th Floor, Harrisburg, PA 17121, telephone no. (717) 787-5122, email address: RA-LIUCBR-REGCOMM@PA.GOV.

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

Sincerely,

Richard W. Bloomingdale
Chairman

cc w/encl: Jennifer Berrier, Acting Secretary
The Honorable Meg Snead, Secretary of Planning and Policy
Robert V. O'Brien, Executive Deputy Secretary
William Trusky, Deputy Secretary for Unemployment Compensation
Neil Cashman, Director of Legislative Affairs
Julia Grubbs, Policy Director
Brian Parr, UC Appeals System Administrator, UCBR
Kelly K. Smith, Executive Deputy Chief Counsel
Janet Tarczy, Deputy Chief Counsel

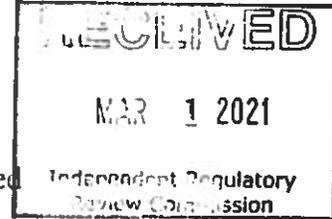
UNEMPLOYMENT COMPENSATION BOARD OF REVIEW
651 BOAS STREET | 11TH FLOOR | HARRISBURG, PA 17121
Ph: (717) 787-5122 | Fax: (717) 265-7667

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

I.D. NUMBER: 12-112
SUBJECT: Time for Filing Appeal from Determination of Department
AGENCY: DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

- 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



FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON LABOR & INDUSTRY</i>
3-1-21	Jennifer Dodge	MAJORITY CHAIR - Jim Cox
3-1-21	Jennifer Dodge	MINORITY CHAIR - Gerald Mullery
		<i>SENATE COMMITTEE ON LABOR & INDUSTRY</i>
		MAJORITY CHAIR _____
		MINORITY CHAIR _____
		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL</i> (for Final Omitted only)
		<i>LEGISLATIVE REFERENCE BUREAU</i> (for Proposed only)

Stephen Hoffman

From: Kratz, Eric <ekratz@pasen.gov>
Sent: Monday, March 1, 2021 8:55 AM
To: Bulletin; Erwin, Noah; kathy.benton@pasenate.com
Cc: Martin, Megan; DeLiberato, Vincent C. (LRB); A.J. Mendelsohn; Willard, Wendy (LI-OCC)
Subject: RE: Delivery - Proposed Regulation 12-112

Received, thank you.

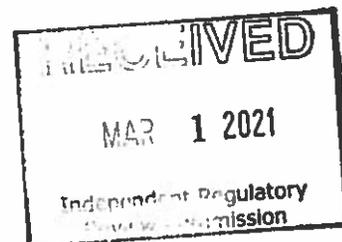
From: Bulletin <bulletin@palrb.us>
Sent: Monday, March 1, 2021 8:46 AM
To: Kratz, Eric <ekratz@pasen.gov>; Erwin, Noah <Noah.Erwin@pasenate.com>; kathy.benton@pasenate.com
Cc: Martin, Megan (OS) <mtmartin@os.pasen.gov>; DeLiberato, Vincent C. (LRB) <vdeliberato@palrb.us>; A.J. Mendelsohn <amendelsohn@palrb.us>; Willard, Wendy (LI-OCC) <wwillard@pa.gov>
Subject: Delivery - Proposed Regulation 12-112
Importance: High

● CAUTION : External Email ●

Good Morning:

We have attached Proposed Rulemaking No. 12-112 from the Department of Labor and Industry.
Please confirm receipt of this email by replying to all.

Thank you and have a nice day.
The Pennsylvania Code & Bulletin Office



Stephen Hoffman

From: Erwin, Noah <Noah.Erwin@pasenate.com>
Sent: Monday, March 1, 2021 8:46 AM
To: Kratz, Eric; Benton, Kathy; Bulletin
Cc: Martin, Megan; Vincent Deliberato; A.J. Mendelsohn; Willard, Wendy (LI-OCC)
Subject: Re: Delivery - Proposed Regulation 12-112

Received - thank you.

Noah Erwin
Legislative Director
Executive Director | Senate Labor & Industry Committee
Office of Senator Tina Tartaglione

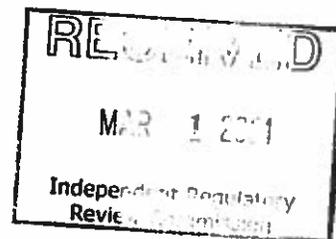
From: Bulletin <bulletin@palrb.us>
Sent: Monday, March 1, 2021 8:45:34 AM
To: Kratz, Eric <ekratz@pasen.gov>; Erwin, Noah <Noah.Erwin@pasenate.com>; Benton, Kathy <Kathy.Benton@pasenate.com>
Cc: Martin, Megan <mtmartin@os.pasen.gov>; Vincent Deliberato <vdeliberato@palrb.us>; A.J. Mendelsohn <amendelsohn@palrb.us>; Willard, Wendy (LI-OCC) <wwillard@pa.gov>
Subject: Delivery - Proposed Regulation 12-112

■ EXTERNAL EMAIL ■

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The Pennsylvania Code & Bulletin Office

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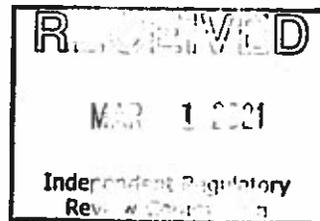
Stephen Hoffman

From: Bulletin <bulletin@palrb.us>
Sent: Monday, March 1, 2021 2:12 PM
To: Willard, Wendy (LI-OCC)
Cc: Leah Brown
Subject: [External] RE: Documents for publication - Proposed Regulation 12-112 - LRB

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Hi Wendy:
Received. Thank you!

Corinne Marut
Editorial Assistant
Legislative Reference Bureau
Pennsylvania Code & Bulletin Office
cmarut@palrb.us



From: Willard, Wendy (LI-OCC) <wwillard@pa.gov>
Sent: Monday, March 1, 2021 1:55 PM
To: Bulletin <bulletin@palrb.us>
Cc: Leah Brown <lbrown@palrb.us>; Willard, Wendy (LI-OCC) <wwillard@pa.gov>
Subject: Documents for publication - Proposed Regulation 12-112 - LRB
Importance: High

Good afternoon,

Please confirm that you have received the above documents for publication of Proposed Regulation 12-112. The Preamble and Annex A are attached in PDF and Word versions.

Also, please confirm date of publication.

Thank you!

Wendy K. Willard | AO
Office of Chief Counsel
PA Department of Labor and Industry
651 Boas Street, 10th Floor | Harrisburg, PA 17121
Phone (717) 346-1191 | Cell (717) 503-1675