

# RULES AND REGULATIONS

## Title 34—LABOR AND INDUSTRY

### DEPARTMENT OF LABOR AND INDUSTRY

#### [34 PA. CODE CH. 121]

#### General Provisions

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), amends Chapter 121 (relating to general provisions) to read as set forth in Annex A. The final-form rulemaking updates and clarifies the existing regulations that govern the Bureau's administration of the Workers' Compensation Act (act) (77 P. S. §§ 1—1041.4 and 2501—2506) and the procedures utilized by employees, employers and insurers.

#### *Statutory Authority*

This final-form rulemaking is published under the authority in sections 401.1 and 435(a) of the act (77 P. S. §§ 710 and 991(a)) and section 2205 of The Administrative Code of 1929 (71 P. S. § 565).

#### *Background*

Chapter 121 was adopted on March 15, 1974, and has not been amended recently, with a few exceptions. The most recent amendments followed the act of November 26, 1997 (P. L. 530, No. 57), which amended sections 306.2, 443 and 446 of the act (77 P. S. §§ 517, 999 and 1000.2). The Department then amended §§ 121.1, 121.22 and 121.23 (relating to definitions; subsequent injury fund; and supersedes fund). Further, the Department added §§ 121.31—121.35.

On June 11, 2004, a stakeholder meeting was held. The comments and suggestions received as a result of this meeting were reviewed and considered. Notice of proposed rulemaking was published at 35 Pa.B. 3807 (July 9, 2005). As a result, the Department received written comments from the following: Lawrence R. Chaban, Esquire, on behalf of the Pennsylvania Trial Lawyers Association; Workers' Compensation Judge Todd B. Seelig, on behalf of the Pennsylvania Workers' Compensation Judges' Professional Association (PWCJPA); Director of Adjudication David A. Cicola, on behalf of the Workers' Compensation Office of Adjudication (Office of Adjudication); Samuel R. Marshall, Esquire, on behalf of The Insurance Federation of Pennsylvania, Inc.; Thomas C. Lowry, Esquire; Matthew Welch, Claims Specialist; Art Mann; and Marc S. Jacobs, Esquire. The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated September 7, 2005. In response to comments received, changes were made to the final-form rulemaking.

#### *Purpose*

The final-form rulemaking updates and clarifies the practices of the Bureau in the administration of the act and of employees, employers, workers' compensation insurers and other interested parties in transactions with the Bureau.

#### *Summary of Final-Form Rulemaking and Responses to Comments*

The Department amended § 121.1 to include definitions of "agreement," "Board," "claimant," "Disease Law," "employer" and "first report of injury." IRRC commented

that two statutory definitions of "employer" should not be combined in one regulatory definition. Accordingly, the reference to section 103 of the act (77 P. S. § 21) has been deleted in the definition of "employer." IRRC also questioned whether the State Workers' Insurance Fund (SWIF) is included in the definition of "insured employer." Although SWIF meets the definition of an "insured employer," it has been added specifically to the definition of "insured employer."

Mr. Jacobs commented that the definition of "employer" conflicts with the Commonwealth Court's decision in *Kramer v. WCAB (Rite Aid Corp.)*, 794 A.2d 953 (Pa. Cmwlth. 2002). However, the statutory definition has been adopted here, which continues to be a viable definition of "employer." Additionally, the Supreme Court overturned this Commonwealth Court decision. *Kramer v. WCAB (Rite Aid Corp.)*, 883 A.2d 518 (Pa. 2005). To clarify the references to the employer's first report of injury, which was formerly known as the Employer's Report of Occupational Injury or Disease, Form LIBC-344, the Department added a general definition for "first report of injury" in the final-form rulemaking.

The Department rescinded § 121.2 because it is unnecessary.

The Department amended § 121.3 (relating to filing of forms) to better reflect the requirements for filing forms. Also, the Department added subsection (c) to clarify the Department's ability to require electronic filing and subsection (d) to clarify how to determine a filing date. IRRC commented that "electronic format" in subsection (a) and "electronic means" in subsection (c) be defined by specific methods. However, the Department believes that not specifically defining these terms enables filing with the Department to evolve as technology evolves. Additionally, since the language in subsection (a) clearly states that forms must be in the format prescribed by the Bureau, this subsection does notify filers of the means by which different forms are to be filed.

IRRC also commented that the Bureau should inform a filer why a form is returned. Accordingly, language has been added in subsection (b) that requires the Bureau to give a reason for the return of a form. Finally, IRRC commented that subsection (d) should explain the filing date if mail is not used for filing. Language has been added to subsection (d) clarifying that the Bureau receipt date is the filing date for all filings that do not fall under the first two sentences of subsection (d). This comports with current practice and a Supreme Court case. *Sellers v. WCAB (HMT Construction Svcs., Inc.)*, 713 A.2d 87 (Pa. 1998).

Mr. Marshall commented that the 10-day time period in subsection (b) for the preservation of a filing date is insufficient. Mr. Marshall also commented that the period should be specified to run from the postmark date of the Department's return. The Department agreed with Mr. Marshall's suggestion regarding extending the 10-day period and increased that time period to 14 days. However, the Department will continue to use the Department's correspondence date, rather than the postmark date, for determining the timing of returns because this method is consistent with all other Department mailings.

Mr. Marshall also commented that the Department should not have the ability to limit filing through electronic means and should be required to accept any electronic filings. The Department does not agree with

this approach because the Department first must have the capability in place to receive and accept an electronic filing. It does not have the capability to accept certain types of electronic filings at this time. The Department will continue to proceed cautiously, as it has in the past, when implementing new forms for electronic filing, by soliciting industry comments beforehand. Mr. Marshall further suggested that subsection (c) be revised to require that future electronic filing requirements introduced by the Department must be done by subsequent rulemaking to insure the practicality of future electronic submissions for all parties. The Department does not believe that a regulation requiring a regulation would be practical. However, insofar as subsection (c) appears to be superfluous in light of subsection (a), the Department removed the proposed language from subsection (c).

The Department added § 121.3a (relating to computation of time) to explain how a period of time will be computed under Chapter 121.

The Department added § 121.3b (relating to providing workers' compensation information) to require an employer to provide general workers' compensation information to every employee at the time of hire and at the time of injury. This new mandatory provision provides employees with the opportunity to learn basic workers' compensation information that otherwise may be difficult to obtain.

The PWCJPA commented that the section should include when the information shall be provided to the employee. The Department agreed and included the requirement that this workers' compensation information be provided at the time of hire and time of injury. This allows all employees access to the information when needed.

IRRC commented that "by your employer" should be added in subsection (b) for clarity. The Department made that change. Mr. Marshall commented that the initial, proposed requirement that this information be posted at an employer's primary places of business would make it difficult for insurers to monitor employer compliance. The Department agreed and removed the general requirement to post this information. The Department will require only that employers provide this information to employees at the time of hire and injury. IRRC and Mr. Marshall also commented that "sites of employment" with regard to the initial posting requirement lacked clarity. Since the information no longer needs to be posted, the phrase has been removed.

Mr. Marshall also suggested that the requirement of referencing the physician panel notice in subsection (b)(3) be removed. To avoid potential confusion with the existing requirements in the medical cost containment regulations, the Department removed this reference.

Mr. Lowry suggested that the last sentence in subsection (b)(3) be revised to inform the employee that he will be asked to sign a written acknowledgement form regarding the employer's list of providers. However, since the reference to that list is being removed from this subsection, and because this information also is separately addressed in the medical cost containment regulations, the reference has not been added.

The Department rescinded § 121.4 because it contained information that is also in § 121.3(a).

The Department amended § 121.5 (relating to reporting injuries to the Bureau) to revise the requirements regarding filing a first report of injury. The amendment eliminates language in subsections (b) and (e) regarding

disability continuing more than or beyond the entire day, shift or turn. The language in subsection (c) conforms to section 438 of the act (77 P. S. § 994). Also, the Department deleted unnecessary language discussing variances and to clarify existing language.

Mr. Lowry commented on the amendment to subsection (a)(2) requiring an employer to file a first report of injury within 7 days. However, this amendment directly parallels the mandate in section 438 of the act that the report be filed within 7 days. Additionally, the amendment does not affect the requirement that an employer respond within 21 days, as set forth in section 406.1 of the act (77 P. S. § 717.1).

Mr. Marshall commented that the definition of "disability" in subsection (c) should be clarified so that it is only linked to the filing of the first report of injury. The Department made this clarification.

The Department rescinded § 121.6 because the process in this section is obsolete.

The Department amended § 121.7 (relating to notice of compensation payable) by splitting proposed § 121.7 into two parts: § 121.7, which focuses solely on the Notice of Compensation Payable; and § 121.7a (relating to notice of temporary compensation payable), which sets out requirements for filing a Notice of Temporary Compensation Payable. The Department believes that this separation improves the clarity of the two provisions. The applicable provisions of proposed § 121.7 that referenced Notices of Temporary Compensation Payable were moved into § 121.7a. Accordingly, changes explained as follows in § 121.7 also are reflected in § 121.7a, when applicable.

The Department amended § 121.7(b) to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Notice of Compensation Payable, Form LIBC-495, except in the case of an estimated notice or a notice filed in a medical only case. The Department deleted language in § 121.7(b) regarding injuries and references the term "disability" in § 121.7(a) to conform to section 406.1 of the act. The Department also allows an employer to file an estimated or amended Notice of Compensation Payable, Form LIBC-495. Finally, the Department added § 121.7(e) to allow an employer to file a Notice of Compensation Payable, Form LIBC-495, in medical-only cases.

The Department added § 121.7a(b) to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Notice of Temporary Compensation Payable, Form LIBC-501. The Department also allows an employer to file an amended Notice of Temporary Compensation Payable, Form LIBC-501.

IRRC commented that amended or estimated notices should be modified to have checkboxes. However, the Department believes there is sufficient room at the top of the form for an insurer to indicate that the form is "amended" or "estimated." When an electronic version of a Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, becomes available, checkboxes will be included for an insurer to indicate whether a form is "amended" or "estimated."

IRRC also commented that § 121.7(e) should be split into two subsections because subsection (e) contains the subjects of Notices of Compensation Payable, Notices of Temporary Compensation Payable and Supplemental Agreements. The Department addressed this issue by splitting proposed § 121.7 into two parts: § 121.7 and § 121.7a.

IRRC stated that § 121.7(f) (now § 121.7(e)) should state which forms are to be filed in medical-only cases. The Department does not believe this is necessary because current case law addresses this issue and is subject to change.

Mr. Chaban commented that an employer should have no greater right to amend a Notice of Temporary Compensation Payable than it does to amend a Notice of Compensation Payable. However, these documents are different under the act. Specifically, the Notice of Temporary Compensation Payable is not an admission of liability on a claim, but rather may be issued by an employer without prejudice during its investigation where there is uncertainty regarding compensability or extent of liability.

Mr. Chaban also commented that the filing of a Notice of Compensation Payable should be mandatory, not permissive, under § 121.7(f) (now § 121.7(e)). However, case law shows that this is not the only form that may be filed to avoid penalties.

Mr. Lowry commented that the language in § 121.7(f) (now § 121.7(e)) improperly limits its use to injuries that have not resulted in "lost time from work," in part by its failure to explain the impact of the 7-day waiting period. Since the regulation is meant simply to recognize the use of a Notice of Compensation Payable in a medical-only matter, the Department does not believe additional explanation is necessary.

Mr. Marshall commented that § 121.7(a) (now §§ 121.7 and 121.7a) should include a change to reflect that a filing is triggered when the insurer knows of the injury by modifying the filing requirement to "no later than 21 days from the date 'that' employer had notice or knowledge." However, since neither the act nor case law clearly distinguishes between the employer and insurer in this regard, the Department does not believe a distinction is warranted.

Mr. Marshall also stated that § 121.7 (now §§ 121.7 and 121.7a) is confusing as to whether an insurer can issue a document and payment to an employee within 21 days if the employer has not notified its insurer. However, section 406.1 of the act requires joint investigation and payment by the employer and insurer.

Mr. Marshall also commented that there is confusion regarding possible conflict with the reporting requirements in the various subsections of § 121.7. The Department agreed and revised this section to indicate that the filing of a Statement of Wages is not required when the Notice of Compensation Payable is estimated under § 121.7(b), or when a medical-only Notice of Compensation Payable is filed under § 121.7(e).

The Department amended § 121.8 (relating to agreements for compensation for disability or permanent injury) to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336. The Department also allows an employer to file an estimated or amended Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

The Department amended § 121.9 (relating to agreements for compensation for death) to clarify that death must occur from the injury, not within 7 days of the injury, to be compensable. Also, the Department amended § 121.9 to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Agreement for Compensation for Death, Form LIBC-338. The Department also allows an employer to file an estimated or amended Agreement for Compensation for Death, Form

LIBC-338. For consistency within these regulations, the Department added language requiring that this form be completed before being signed in subsection (a).

The Department rescinded § 121.10 because supplemental agreements are discussed in § 121.17(b) (relating to change in compensation).

The Department amended § 121.11 (relating to supplemental agreements for compensation for death) to clarify the circumstances on which a change of compensation may be based. IRRC commented that in subsection (b), the "may" should be changed to "shall." The Department agreed and that change was made.

The Department amended § 121.12 (relating to Bureau review of agreements and notices of compensation payable) to require an amended version of an agreement or Notice of Compensation Payable, Form LIBC-495, when a correction of errors results in an increase of an employee's wage or compensation. Additionally, the Department amended § 121.12 to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every amended form under this section. IRRC commented that the "may" in subsection (a) should be changed to "shall." The Department agreed and that change was made.

The Department amended §§ 121.13 and 121.14 (relating to denial of compensation; and weekly wage for occupational disease cases) to clarify existing language.

The Department amended § 121.15 (relating to compensation payable) to clarify that death must occur from the injury, not within 7 days of the injury, to be compensable.

The Department amended § 121.16 (relating to updating claims status) to delete the filing of an annual Statement of Account of Compensation Paid, Form LIBC-392. The Department instead requires the filing of an Annual Claims Status Report, Form LIBC-774, on which an insurer verifies information on its claims. The Department also amends § 121.16 to require the filing of a Final Statement of Account of Compensation Paid, Form LIBC-392A, immediately after the final payment of compensation. IRRC suggested that the Annual Claims Status Report form be shared with the regulated community prior to submission of the final-form rulemaking. The Department shared this information and also engaged in a helpful dialogue to create an agreeable final version of this report.

Mr. Marshall questioned the Department's authority for requiring this filing and commented that the enforcement provisions in § 121.16(a)(3) and (4) need to be reconciled with those in § 121.27 (relating to orders to show cause). The Department believes that the amendment to this section falls within the rulemaking authority in section 435(a) of the act insofar as it is reasonably calculated to expedite the reporting and processing of cases and to insure full and proper payment of all compensation due. The Department does not believe that the specific enforcement provision regarding the failure to file this new form is inconsistent with the availability of the order to show cause provisions in § 121.27.

IRRC, Mr. Marshall and Mr. Lowry further questioned the purpose and need for the new Annual Claims Status Report, Form LIBC-774, as well as the cost and additional paperwork which would be required for its completion. The new report seeks to provide a method of annually updating and verifying the accuracy of Bureau and insurer files regarding the status of certain open workers' compensation cases and to ensure proper closure of them when applicable. This annual report is intended

to increase compliance with the act by verifying information concerning certain ongoing claims on which no activity has occurred. Insofar as an annual "accounting" was previously required on a claim-by-claim basis for all open claims through the filing of the Statement of Account of Compensation Paid, Form LIBC-392, the Department believes that this new format requiring a one-time annual filing will be less cumbersome and costly for insurers. The Department believes that this form will allow more accurate accounting and better reporting and maintenance of data regarding claims, which in turn will allow insurers to avoid unnecessary exposure to liability, prevent delays in the Bureau's processing of future filings and expedite claimants' proper and timely receipt of benefits. The form will also help to ensure the accuracy of data and statistics provided at the request of the Workers' Compensation Advisory Council in performing its duties under the act.

Mr. Marshall commented that the report should apply to claims opened between 3 and 4 years before the calendar report year. The Department agreed and revised this section to state that the report shall include a list of all open claims which were initiated by the filing of a Bureau document other than a first report of injury, more than 3 calendar years before the calendar year in which the report is filed and on which no activity was reported to the Bureau during the calendar year immediately before the report year. In addition, the Department clarified that only open claims which were initiated during calendar year 2004 and thereafter may be listed in the Annual Claims Status Report. Additionally, the date when the Bureau will print and provide the form to insurers (subsection (a)(1)), as well as the date insurers are to complete and return the report to the Bureau (subsection (a)(2)), have been modified to March 1 and June 1, respectively, to allow all parties sufficient time for completion of this report. Mr. Marshall also suggested that the instructions for the form be written into the regulation, perhaps by incorporating the form itself into this section. While the inclusion of LIBC form instructions in a regulation is not practical, the Department added more details to clarify the information that will be captured in the report.

The Department amended § 121.17 to explain the procedures for obtaining changes in compensation, including termination, suspension, modification and other changes. IRRC commented that the filing of the forms referenced in § 121.17 should be required. However, employers and insurers are not required to pursue the options in § 121.17, and therefore the filing of those forms should not be required. IRRC also commented that a *Purdon's* citation should be included for the act sections in subsection (c). However, the sections are part of a form name. Therefore, no citation is needed. The Department added reference to the Agreement for Compensation for Death, Form LIBC-338, in subsection (b) for consistency within the regulations.

Mr. Chaban commented that a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, should not be utilized for termination of compensation without sufficient warnings being placed on the form. He stated that most of the warnings on the Agreement to Stop Weekly Workers' Compensation Payments (Final Receipt), Form LIBC-340, should be reproduced on the Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337. However, section 408 of the act (77 P.S. § 732) specifically allows compensation to be terminated at any time by an agreement or supplemental agreement. Case

law also currently supports the use of a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, to terminate a claimant's benefits. Further, unlike the Agreement to Stop Weekly Workers' Compensation Payments (Final Receipt), Form LIBC-340, which may be used only to stop the payment of indemnity payments, the Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, may be used for a variety of other purposes such as a reinstatement, modification or suspension of benefits, and the termination of both indemnity and medical benefits in certain circumstances. Therefore, placing warnings on the Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, to address specific circumstances would not be practical or appropriate.

Mr. Jacobs commented that subsection (d) should be revised to reflect the 90-day period that is the maximum time allowed for temporary compensation. The Department agreed and that change was made.

The Department amended § 121.18 (relating to subrogation) to clarify existing language. IRRC commented that "third party" should be changed to "employee" in subsection (a). Additionally, Mr. Marshall commented that "third party" should be changed to "employer" in subsection (a). The Department agreed with IRRC and that change was made.

Mr. Lowry commented that he believed the Third Party Settlement Agreement, Form LIBC-380, is contradictory to controlling case law. However, the Department disagrees that the form and case law are contradictory. Nonetheless, Form LIBC-380 has since been revised with input from the legal community to clarify the form and simplify its completion. Mr. Marshall suggested that, to avoid the need to file repetitious paperwork, the Department should eliminate the requirement in § 121.18(b) that a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, "shall" be filed where a credit was requested against future compensation payable. The Department agreed that filing this form no longer should be required. However, the Department believes that the parties may still wish to do so. Therefore, subsection (b) has been amended to no longer require the filing of the document and to state that it "may" be filed in that instance.

The Department amended § 121.20 (relating to commutation of compensation under section 412 of the act (77 P.S. § 791)) to clarify existing language and to change the reference from a "25-week period" to a "52-week period."

The Department amended § 121.21 (relating to reimbursement for silicosis, anthraco-silicosis or coal workers' pneumoconiosis) to require record retention for 3 years instead of indefinitely. The Department also amended § 121.21 to clarify existing language. IRRC commented that the "required format" referenced in subsection (b)(1) should be explained in more detail or deleted. The Department deleted this phrase and now only requires that the information in subsection (b)(1) be reported to the Department. IRRC commented that the regulation should state when the 3-year retention period begins. The Department agreed and made it clear that records should be kept for 3 years from the date of each payment. IRRC also commented that the phrase "reasonable times" is vague and should be changed to "normal business hours." The Department agreed and made this change.

The Department amended §§ 121.22 and 121.23 to clarify existing language.

The Department rescinded § 121.24. The previous requirements concerning attorney fees are more appropriately addressed in Chapter 131 (relating to special rules of administrative practice and procedure before workers' compensation judges).

The Department amended § 121.25 (relating to issuance of compensation payments) to allow delivery of a claimant's compensation check to the claimant's attorney if the claimant and employer have executed an Authorization for Alternative Delivery of Compensation Payments, Form LIBC-10, or if a court otherwise orders delivery.

IRRC commented that the regulation should specify who is responsible for notifying counsel and the manner in which counsel of record will be notified. Mr. Marshall commented that the manner of the notice should be a copy of the Notice of Compensation Payable or Notice of Temporary Compensation Payable. The Department agreed that the responsible party for notification should be included and specified that the insurer or self-insured employer is responsible for sending notice to counsel of record. However, the Department did not specify the manner of notification because it believes that it is more appropriate to allow the insurer or self-insured employer to send the notice in the manner it chooses.

The Office of Adjudication commented that the regulation should specify that alternative delivery may be ordered by workers' compensation authorities. The Department agreed and included specific reference to both the workers' compensation judges and the Workers' Compensation Appeal Board (Board) in this regard. The Office of Adjudication further commented that the regulation should retain the previously deleted reference in subsection (b) to the "default" method of payment by "first-class mail to the claimant's last known address." The Department agreed and made that change.

The Department rescinded § 121.26 because it contained language that was duplicative of other language in the regulations.

The Department amended § 121.27 to clarify the process involved with an order to show cause. Additionally, the Department amended § 121.27 to eliminate language regarding penalty petitions, which was placed in § 121.27a (relating to Bureau intervention and penalties).

IRRC and Mr. Marshall commented that references to the "Department" in this section should be replaced with a reference to the "Bureau" for consistency. However, the Department believes that reference to the agency itself is necessary here given the nature of the order to show cause proceedings. IRRC also commented that specific reference be made to identify the "regulations" contemplated in this section. The Department made this change.

Mr. Marshall suggested that § 121.27 should incorporate 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) (GRAPP) for order to show cause proceedings. Mr. Marshall questioned the need for the exceptions to the GRAPP in proposed § 121.27(b) and (c). IRRC and Mr. Marshall also commented that subsection (d) did not clearly indicate when the GRAPP were applicable. The Department clarified this section to indicate that the GRAPP are applicable to the extent not specifically superseded in § 121.27(h). The Department has replaced references to "hearing officer" with "presiding officer" for consistency with the GRAPP. The Department believes that departures from these rules to establish a specific time period for answers and to allow appointment of the presiding officer by the Director of Adjudication, who is more familiar with the

handling and litigation of workers' compensation matters, are needed to improve the certainty and efficiency of these proceedings.

The Department added § 121.27a to address its involvement in penalty petitions. IRRC commented that the second "may" in subsection (a) should be "shall." However, notice of penalties to the Bureau is currently mandatory and this process has made it infeasible for the Bureau to adequately review penalty cases. IRRC also commented that the Department should clarify in subsection (b) that the Bureau and other parties will be notified at the same time by the worker's compensation judge. The Department agreed and made that change.

Mr. Marshall commented that references to the "Bureau" in this section create confusion in light of the references to the "Department" in § 121.27. Mr. Marshall also commented on the differences between this section and the intervention provisions in the GRAPP. As previously noted, the Department believes that reference to the agency itself is necessary in § 121.27 given the nature of the agency-initiated order to show cause proceedings. However, reference to the Bureau is more appropriate in § 121.27a in connection with possible intervention in the administrative proceedings involving claimant-initiated penalty petitions before workers' compensation judges or the Board. Further, the Department believes that application of the GRAPP would not be appropriate in penalty proceedings conducted under this act.

The Department rescinded § 121.28 because superseas requests have been more appropriately addressed in Chapter 131.

The Department amended § 121.30 (relating to section 306(h) payments (77 P. S. § 583)) to require record retention for 3 years, instead of indefinitely. The Department further amended § 121.30 to add language regarding the Bureau's ability to make payments within its discretion to a claimant when the employer fails to make payments. The Department also amended § 121.30 to clarify existing language.

The Office of Adjudication commented that the Department should review § 121.30(a) in light of the amendments to section 306(h) of the act (77 P. S. § 583) in the act of November 9, 2006 (P. L. 1362, No. 147) (Act 147). The Department agreed and amended subsection (a) to require an updated listing from insurers, with information similar to that previously required under the prior subsection (a), regarding pre-August 31, 1993, claims that may be eligible for section 306(h) payments under Act 147. Specifically, insurers shall provide the Department with a list of information for claimants who are receiving less than \$100 per week under sections 306(a), 306(c)(23) or 307 of the act (77 P. S. §§ 511, 513(c)(23), 561, 562 and 542) as of January 1, 2007. This list must contain the following particulars: (1) Bureau code; (2) name of the claimant; (3) Social Security number; (4) claimant's date of birth; (5) date of injury; (6) name of employer; (7) insurer claim number; and (8) current weekly compensation rate. Insurers were notified of this revised list previously by mail and by a notice published at 36 Pa.B. 7927 (December 23, 2006).

IRRC commented that the regulation should state when the 3-year retention period begins. The Department agreed and made it clear that records should be kept 3 years from the date of each payment. Also, IRRC commented that "reasonable times" is vague and should be changed to "normal business hours." The Department agreed and that change was made.

The Department amended §§ 121.31—121.35 to clarify existing language.

Mr. Mann generally commented that he was curious about the problems the new regulations are designed to solve. Mr. Mann also questioned whether these amendments will help manufacturers become more competitive in a global marketplace. The existing regulations have not been amended in many years, with a few exceptions. The final-form rulemaking provides updated guidance to employees, employers and workers' compensation insurers in their transactions with the Bureau. Updating the regulations is imperative to accurately reflect the Bureau's administration of the act and to reflect technological enhancements common in the workers' compensation community. Additionally, the Bureau believes that these regulations will assist employees, employers, insurers and the Bureau in more efficiently meeting their obligations under the act.

Mr. Welch commented that certain forms should be required to be signed and returned by employees. However, Mr. Welch's comment pertained to regulations in Chapter 123 (relating to general provisions—Part II).

#### *Affected Persons*

The persons affected by this final-form rulemaking are employees, employers and workers' compensation insurers.

#### *Fiscal Impact*

There is no significant fiscal impact associated with this final-form rulemaking.

#### *Reporting, Recordkeeping and Paperwork Requirements*

The final-form rulemaking does not impose significant additional reporting, recordkeeping or paperwork requirements on either the Commonwealth or the regulated community, but will result in increased convenience and time savings for insurers. The final-form rulemaking requires the creation of one new form, the Annual Claims Status Report, Form LIBC-774, as well as the modification of another form, the Final Statement of Account of Compensation Paid, Form LIBC-392A. However, the annual filing of a Statement of Account of Compensation Paid, Form LIBC-392, has been eliminated. These amendments will reduce the number and frequency of forms required for filing by insurers, since the new Annual Claims Status Report, Form LIBC-774, is a more convenient, one-time annual form to address the status of all of the insurer's applicable claims, while the former Statement of Account of Compensation Paid, Form LIBC-392, was required on piece-meal basis throughout the year for each individual claim.

#### *Effective Date*

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

#### *Sunset Date*

A sunset date is not appropriate for these regulations. However, the Department will continue to monitor the impact and effectiveness of the regulations.

#### *Contact Person*

Persons who require additional information about this final-form rulemaking may submit inquiries to John T. Kupchinsky, Director, Bureau of Workers' Compensation, Department of Labor and Industry, 1171 South Cameron Street, Room 103, Harrisburg, PA 17104, (717) 783-5421, jkupchinsk@state.pa.us.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 27, 2005, the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 3807, to IRRC and the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.1)—(j.3) of the Regulatory Review Act (71 P. S. § 745.5a(j.1)—(j.3)), on June 20, 2007, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 21, 2007, and approved the final-form rulemaking.

#### *Findings*

The Department finds that:

(1) Public notice of intention to amend the administrative regulations amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the act.

#### *Order*

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

(a) The regulations of the Department, 34 Pa. Code Chapter 121, are amended by adding §§ 121.3a, 121.3b, 121.7a and 121.27a; by amending §§ 121.1, 121.3, 121.5, 121.7, 121.8, 121.9, 121.11—121.18, 121.20—121.23, 121.25, 121.27 and 121.30—121.35; and by deleting §§ 121.2, 121.4, 121.6, 121.10, 121.24, 121.26 and 121.28 to read as set forth in Annex A.

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

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

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

STEPHEN M. SCHMERIN,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 3138 (July 7, 2007).)*

**Fiscal Note:** Fiscal Note 12-67 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY  
PART VIII. BUREAU OF WORKERS'  
COMPENSATION**

**CHAPTER 121. GENERAL PROVISIONS**

**§ 121.1. Definitions.**

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

*Act*—The Workers' Compensation Act (77 P. S. §§ 1—1041.4 and 2501—2506).

*Agreement*—For purposes of this chapter, an agreement is limited to any of the following:

(i) Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

(ii) Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337.

(iii) Agreement for Compensation for Death, Form LIBC-338.

(iv) Supplemental Agreement for Compensation for Death, Form LIBC-339.

*Approved rating organization*—One or more organizations situated within this Commonwealth, subject to supervision and to examination by the Insurance Commissioner and approved by the Insurance Commissioner as adequately equipped to perform the functions specified in Article VII of the act (77 P. S. §§ 1035.1—1035.22) on an equitable and impartial basis.

*Board*—The Workers' Compensation Appeal Board.

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

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

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

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

*Earned premium*—A direct premium earned as required to be reported to the Insurance Department on Special Schedule "W," under section 655 of The Insurance Company Law of 1921 (40 P. S. § 815). For the purposes of this chapter, direct premium earned may not include:

(i) The effects of premium credits granted under deductible elections by insured employer.

(ii) Premiums not attributable to coverage under the act or the Disease Law.

(iii) Premiums attributable to excess policies written for specified retentions on self-insured employers.

*Employer*—As defined in section 401 of the act (77 P. S. § 701), including the insurer and a self-insured employer.

*First report of injury*—A filing made with the Bureau under section 438 of the act (77 P. S. § 994).

*Insurance carrier*—An entity or group of affiliated entities subject to The Insurance Company Law of 1921 (40 P. S. §§ 341—477d), including the State Workers' Insurance Fund, but not including self-insured employers or runoff self-insurers, with which an employer has insured its liability under section 305 of the act (77 P. S. § 501).

*Insured employer*—An employer which has chosen to insure its workers' compensation liabilities through a workers' compensation insurance carrier licensed to do so in this Commonwealth, including the State Workers' Insurance Fund.

*Insurer*—

(i) A workers' compensation insurance carrier which is licensed to insure workers' compensation liabilities in this Commonwealth and acts in this capacity on behalf of insured employers.

(ii) The term includes a self-insured employer and a runoff self-insurer.

*Runoff self-insurer*—An employer that had been a self-insurer but no longer maintains a current permit to self-insure under section 305 of the act (77 P. S. § 501).

*Self-insured employer*—

(i) An employer which has been granted the privilege to self-insure its liability under the act.

(ii) The term includes a parent company or affiliate which has assumed a subsidiary's or an affiliate's liability upon the termination of the parent-subsidary or affiliate relationship, and a runoff self-insurer.

*Special funds*—Funds maintained under sections 306.2, 443 and 446 of the act (77 P. S. §§ 517, 999 and 1000.2).

**§ 121.2. (Reserved).**

**§ 121.3. Filing of forms.**

(a) Forms must be in the format prescribed by the Bureau. All references to forms mean paper forms or an electronic format prescribed by the Bureau.

(b) The Bureau may return forms that are not properly completed or filed. If a form is returned, the Bureau will notify the submitting party as to the reason the form was returned. For a form returned for the first time, the Bureau will preserve the filing date if the submitting party files a corrected version of the form within 14 days of the written notice of the return of the form.

(c) The filing date is the date indicated on the United States Postal Service postmark or postal receipt. If the postmark or postal receipt is absent or unreadable, the filing date is the date of receipt by the Bureau. In all other instances, including electronic filing or hand-delivery, the filing date is the Bureau's date of receipt.

**§ 121.3a. Computation of time.**

Except as otherwise provided by law, in computing a period of time prescribed or allowed by this chapter, the day of the act, event or default after which the designated period of time begins to run may not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

**§ 121.3b. Providing workers' compensation information.**

(a) The workers' compensation information specified in subsection (b) shall be provided to every employee at the time of hire and immediately after the injury, or as soon thereafter as possible under the circumstances of the injury. If the employee's injuries are so severe that

emergency care is required, the information shall be given as soon after the occurrence of the injury as is practicable.

(b) The information shall be entitled "Workers' Compensation Information" and include the following:

(1) The workers' compensation law provides wage loss and medical benefits to employees who cannot work, or who need medical care, because of a work-related injury.

(2) Benefits are required to be paid by your employer when self-insured, or through insurance provided by your employer. Your employer is required to post the name of the company responsible for paying workers' compensation benefits at its primary place of business and at its sites of employment in a prominent and easily accessible place, including, without limitation, areas used for the treatment of injured employees or for the administration of first aid.

(3) You should report immediately any injury or work-related illness to your employer.

(4) Your benefits could be delayed or denied if you do not notify your employer immediately.

(5) If your claim is denied by your employer, you have the right to request a hearing before a workers' compensation judge.

(6) The Bureau of Workers' Compensation cannot provide legal advice. However, you may contact the Bureau of Workers' Compensation for additional general information at: Bureau of Workers' Compensation, 1171 South Cameron Street, Room 103, Harrisburg, Pennsylvania 17104-2501; telephone number within Pennsylvania (800) 482-2383; telephone number outside of this Commonwealth (717) 772-4447; TTY (800) 362-4228 (for hearing and speech impaired only); www.state.pa.us, PA Keyword: workers comp.

(c) The information specified in subsection (b) must be printed on paper no smaller than 8 1/2 × 11 inches and in font no smaller than 11 point.

**§ 121.4. (Reserved).**

**§ 121.5. Reporting injuries to the Bureau.**

(a) The employer shall file a first report of injury as follows:

(1) Within 48 hours for every injury resulting in death.

(2) Within 7 days after the date disability begins for all other injuries covered by section 438 of the act (77 P. S. § 994).

(3) If there is no disability, a copy of the report should not be sent to the Department.

(b) The employer shall send a copy of the first report of injury to the employee simultaneously with filing it with the Bureau.

(c) A disability that requires a first report of injury is defined as an injury only resulting in death or disability continuing the entire day, shift or turn, or longer, in which the injury was received.

**§ 121.6. (Reserved).**

**§ 121.7. Notice of compensation payable.**

(a) If an employer files a Notice of Compensation Payable, Form LIBC-495, the employer shall do all of the following simultaneously and no later than 21 days from the date the employer had notice or knowledge of the disability:

(1) Send the Notice of Compensation Payable, Form LIBC-495, to the employee or the employee's dependent.

(2) Pay compensation to the employee or to the employee's dependent.

(3) File the Notice of Compensation Payable, Form LIBC-495, with the Bureau.

(b) A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Notice of Compensation Payable, Form LIBC-495, except a Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, may not be filed with either of the following:

(1) An estimated Notice of Compensation Payable, Form LIBC-495, filed under subsection (c).

(2) A Notice of Compensation Payable, Form LIBC-495, filed under subsection (e).

(c) The employer may file a Notice of Compensation Payable, Form LIBC-495, based upon the employee's estimated wages if the employer has not obtained the wages necessary to properly calculate the employee's compensation payable. The estimated Notice of Compensation Payable, Form LIBC-495, shall be clearly identified as "Estimated."

(d) If the estimated wages or compensation is not correct, the employer shall amend the estimated Notice of Compensation Payable, Form LIBC-495, upon receipt of the employee's actual wages in one of the following ways:

(1) Amendments resulting in an increase in the employee's wage or compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements and notices of compensation payable), and shall be clearly identified as "Amended" and may have only the insurer's signature.

(2) The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17 (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

(e) In medical only cases, when an employee's injury has not resulted in lost time from work, an employer may file a Notice of Compensation Payable, Form LIBC-495.

**§ 121.7a. Notice of temporary compensation payable.**

(a) If an employer files a Notice of Temporary Compensation Payable, Form LIBC-501, the employer shall do all of the following simultaneously and no later than 21 days from the date the employer had notice or knowledge of the disability:

(1) Send the Notice of Temporary Compensation Payable, Form LIBC-501, to the employee or the employee's dependent.

(2) Pay compensation to the employee or to the employee's dependent.

(3) File the Notice of Temporary Compensation Payable, Form LIBC-501, with the Bureau.

(b) A Statement of Wages, Form LIBC-494A or Statement of Wages, Form LIBC-494C, shall be filed with every Notice of Temporary Compensation Payable, Form LIBC-501, except a Statement of Wages, Form LIBC-494A or Statement of Wages, Form LIBC-494C, may not be filed with a Notice of Temporary Compensation Payable, Form LIBC-501, filed under subsection (d).



(c) To modify a Notice of Temporary Compensation Payable, Form LIBC-501, an employer shall file an amended Notice of Temporary Compensation Payable, Form LIBC-501, with the Bureau during the 90-day temporary compensation payable period. The amended Notice of Temporary Compensation Payable, Form LIBC-501, shall be clearly identified as "Amended" and may have only the insurer's signature.

(1) A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every amended Notice of Temporary Compensation Payable, Form LIBC-501.

(2) This section does not apply upon conversion of the Notice of Temporary Compensation Payable, Form LIBC-501, to a Notice of Compensation Payable, Form LIBC-495.

(d) In medical only cases, when an employee's injury has not resulted in lost time from work, an employer may file a Notice of Temporary Compensation Payable, Form LIBC-501.

**§ 121.8. Agreements for compensation for disability or permanent injury.**

(a) An Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, shall be completed before being signed by the employer and the employee. If the employer and the employee enter into an agreement, the employer shall do all of the following simultaneously and not later than 21 days from the date the employer had notice or knowledge of the disability:

- (1) Send the fully-executed agreement to the employee.
- (2) Pay compensation to the employee.
- (3) File the agreement with the Bureau.

(b) A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

(c) If the employer has not obtained the wages necessary to properly calculate the employee's compensation payable, an Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, based upon the employee's estimated wages may be filed. The estimated Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, shall be clearly identified as "Estimated."

(d) If the estimated wages or compensation is not correct, the employer shall amend the estimated Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, upon receipt of the employee's actual wages.

(1) Amendments resulting in an increase in the employee's wage or compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements and notices of compensation payable), and shall be clearly identified as "Amended."

(2) The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17 (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

**§ 121.9. Agreements for compensation for death.**

(a) If a compensable injury results in death, an Agreement for Compensation for Death, Form LIBC-338, shall be executed between an employer and the deceased's dependents or personal representative and filed with the

Bureau. An Agreement for Compensation for Death, Form LIBC-338, shall be completed before being signed by an employer and a deceased's dependents or personal representative.

(b) A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Agreement for Compensation for Death, Form LIBC-338.

(c) If death results from the injury, compensation payments to the dependents for the death benefit shall begin from the date of the employee's death.

(d) If the employer has not obtained the wages necessary to properly calculate the employee's compensation payable, an Agreement for Compensation for Death, Form LIBC-338, based on the employee's estimated wages may be filed. The estimated Agreement for Compensation for Death, Form LIBC-338, shall be clearly identified as "Estimated."

(e) If the estimated wages or compensation is not correct, the employer shall amend the estimated Agreement for Compensation for Death, Form LIBC-338, upon receipt of the employee's actual wages.

(1) Amendments resulting in an increase in the employee's wage or dependent's compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements and notices of compensation payable), and shall be clearly identified as "Amended."

(2) The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17 (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

**§ 121.10. (Reserved).**

**§ 121.11. Supplemental agreements for compensation for death.**

(a) A Supplemental Agreement for Compensation for Death, Form LIBC-339, may be used to change an Agreement for Compensation for Death, Form LIBC-338, or an award. A Supplemental Agreement for Compensation for Death, Form LIBC-339, shall be completed before being signed by an employer and a deceased's dependents or personal representative.

(b) An Agreement for Compensation for Death, Form LIBC-338, shall be changed for any of the following reasons:

- (1) Birth of a posthumous child.
- (2) A change in dependent's status, including death.
- (3) A surviving spouse dies, remarries or becomes capable of self-support and any dependent children remain eligible for benefits.

(c) The Bureau will presume that the surviving parent is guardian for purposes of receiving compensation under the act.

(d) The completed Supplemental Agreement for Compensation for Death, Form LIBC-339, shall be sent to all of the deceased's dependents or their personal representative and filed with the Bureau.

**§ 121.12. Bureau review of agreements and notices of compensation payable.**

(a) Errors in computing wages shall be corrected by filing an amended version of the agreement or Notice of

Compensation Payable, Form LIBC-495, with the Bureau if correction of errors would increase the employee's wage or compensation.

(1) The amended agreement or Notice of Compensation Payable, Form LIBC-495, shall be clearly identified as "Amended."

(2) A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every amended agreement or Notice of Compensation Payable, Form LIBC-495.

(b) The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17 (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

**§ 121.13. Denial of compensation.**

If compensation is controverted, a Notice of Workers' Compensation Denial, Form LIBC-496, shall be sent to the employee or dependent and filed with the Bureau, fully stating the grounds upon which the right to compensation is controverted, within 21 days after notice or knowledge to the employer of the employee's disability or death.

**§ 121.14. Weekly wage for occupational disease cases.**

For cases involving occupational diseases under the act, the weekly wage will be determined in accordance with section 309 of the act (77 P.S. § 582), and a claimant's compensation rate shall be subject to the maximum compensation payable rate in effect at the date of last exposure.

**§ 121.15. Compensation payable.**

(a) In computing the time when the disability becomes compensable, the day the injured employee is unable to continue at work by reason of the injury shall be counted as the first day of disability in the 7 day waiting period. If the injured employee is paid full wages for the day, shift or turn on which the injury occurred, the following day shall be counted as the first day of disability. In determining the waiting period or time during which compensation is payable, each calendar day, including Sundays and holidays, shall be counted. In determining the period of disability, seven should be used as a divisor to determine the number, and any part, of the weeks.

(b) If death results from the injury, compensation payments to the dependents for death benefits shall begin from the date of the employee's death.

(c) If death results more than 7 days after the injury, compensation payments covering the disability period should be paid as set forth in this chapter, and compensation payments because of death due to the injury shall start from the date of death.

(d) Compensation due to the date of death shall be paid to the nearest of kin, or in the absence of same, to the estate.

**§ 121.16. Updating claims status.**

(a) The following paragraphs apply to the Annual Claims Status Report, Form LIBC-774:

(1) The Bureau will provide the Annual Claims Status Report, Form LIBC-774, to an insurer each year before March 1.

(2) The insurer shall file a completed Annual Claims Status Report, Form LIBC-774, including any attachment required to support the data reported, to the Bureau each year before June 1.

(3) If an insurance carrier fails to file the completed report, the Bureau may recommend that the Insurance Commissioner revoke or suspend the insurance carrier's license under section 441(a) of the act (77 P.S. § 997).

(4) If a self-insured employer fails to timely file the completed report, the Secretary of the Department may revoke or suspend the self-insured employer's privilege to carry its own risk under section 441(b) of the act.

(5) The Annual Claims Status Report must contain a list of all open claims which were initiated by the filing of a Bureau document other than a first report of injury, more than 3 calendar years before the calendar year in which the report is filed and on which no activity was reported to the Bureau during the calendar year immediately before the report year.

(6) Only open claims which were initiated with the Bureau during calendar year 2004 and thereafter may be listed in the Annual Claims Status Report.

(b) A Final Statement of Account of Compensation Paid, Form LIBC-392A, shall be filed with the Bureau immediately after the final payment of compensation.

**§ 121.17. Change in compensation.**

(a) If an injured employee has recovered from an injury, or a deceased employee's dependent or personal representative is no longer eligible to receive death benefits, an Agreement to Stop Weekly Workers' Compensation Payments (Final Receipt), Form LIBC-340, may be executed by the parties. The executed agreement shall be filed with the Bureau.

(b) Termination, suspension, modification or other change in compensation may be accomplished by filing with the Bureau a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337. A Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, may be used to change an Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, an Agreement for Compensation for Death, Form LIBC-338, a Notice of Compensation Payable, Form LIBC-495, or an award. A Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, shall be completed before being signed by the employer and the employee. The completed Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, shall be sent to the employee or his dependents and filed with the Bureau.

(c) A suspension or modification of compensation may be accomplished by the employer mailing a Notification of Suspension or Modification Pursuant to §§ 413 (c) and (d), Form LIBC-751, to the Bureau and the employee. The wage calculation on the Notification of Suspension or Modification Pursuant to §§ 413 (c) and (d), Form LIBC-751, shall be completed for a modification.

(d) If temporary payments made under § 121.7a (relating to notice of temporary compensation payable) are stopped, the employer shall file one of the following:

(1) A Notice Stopping Temporary Compensation, Form LIBC-502, and a Notice of Workers' Compensation Denial, Form LIBC-496, within 5 days of the last payment and within the 90-day temporary compensation payable period.

(2) A Notice of Compensation Payable, Form LIBC-495.

(3) An Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

(e) The employer may not file a Notification of Suspension or Modification Pursuant to §§ 413 (c) and (d), Form LIBC-751, to stop temporary payments made under § 121.7a.

(f) If termination, suspension or modification of compensation cannot be achieved through subsection (a), (b), (c) or (d), the employer may file a Petition To: Terminate (stop payment of worker's compensation), Terminate (based upon physician's affidavit, a special supersedeas hearing to be scheduled), Modify or Suspend Compensation Benefits, Form LIBC-378.

**§ 121.18. Subrogation.**

(a) If an employee obtains a third-party recovery under section 319 of the act (77 P. S. § 671), a Third Party Settlement Agreement, Form LIBC-380, shall be executed by the parties.

(b) If credit is requested against future compensation payable, a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, may also be filed with the Bureau, including the amount and periodic method of pro rata reimbursement of attorney fees and expenses.

**§ 121.20. Commutation of compensation under section 412 of the act (77 P. S. § 791).**

Commutation under section 412 of the act (77 P. S. § 791) shall only be allowed for the final 52-week period or less. The commutation amount may not be paid in installments. A Commutation of Compensation, Form LIBC-498, shall be filed with the Bureau.

**§ 121.21. Reimbursement for silicosis, anthracosilicosis or coal workers' pneumoconiosis.**

(a) Claims for compensation for silicosis, anthracosilicosis or coal workers' pneumoconiosis as defined in section 108(q) of the act (77 P. S. § 27.1(q)), for disability or death, when the date of disability commences or death occurs between July 1, 1973, and June 30, 1976, inclusive, and when the liable employer is seeking to offset part of its liability under section 305.1 of the act (77 P. S. § 411.1), shall be instituted by filing a Claim Petition for Workers' Compensation, Form LIBC-362, with the Bureau.

(b) Unless stayed by a supersedeas on appeal, following the issuance of an award by the workers' compensation judge, the Board or the appellate court, compensation payments for silicosis, anthracosilicosis or coal workers' pneumoconiosis shall be made in full by the insurer. If the insurer seeks reimbursement from the Bureau under section 305.1 of the act, it shall submit the following to the Bureau:

(1) A notarized statement, signed by an officer of the company, containing an itemized list of payments made to all claimants for quarterly reimbursement. Each itemized entry must contain the claimant's name, address, Social Security number and the total amount paid to the claimant. Each itemized list shall be made for a full and exact calendar quarter: that is, January 1 through March 31; April 1 through June 30; July 1 through September 30; or October 1 through December 31. Each list must have two categories: recurring quarterly reimbursement

and initial payment made to each claimant, which payment should include the current reimbursable quarter. Each list submitted must be in roster form and in numerical order according to the claimant's Social Security number, contain the claimant's name and Social Security number, cover the amount to be reimbursed and the total amount paid to the claimant, and be reported to the Bureau.

(2) Each bill containing the itemized entries shall be submitted to the Bureau no later than the 15th day of the month following the end of the calendar quarter for which reimbursement is sought. A bill received after that date will not be considered for payment until the end of the following quarter.

(c) For auditing purposes, an insurer shall keep records for 3 years from the date of each payment made under this section. The records shall be made available for inspection by the Bureau during normal business hours.

(d) If the Bureau believes that the insurer primarily liable for compensation under the act has failed to make a payment under the act and this section, the Bureau may pay compensation directly to the claimant, for the portion of the compensation which is payable by the Commonwealth under section 305.1 of the act until the insurer resumes payment of compensation. The Bureau is not required to initiate direct payments to a claimant when the insurer is making full payment of the compensation but is not seeking reimbursement under this section.

**§ 121.22. Subsequent injury fund.**

(a) Compensation for a subsequent injury, as defined in section 306.1 of the act (77 P. S. § 516) shall be paid as follows:

(1) The employer is responsible for payments due for specific loss under section 306(c) of the act (77 P. S. § 513).

(2) Upon expiration of the specific loss period, the Bureau will be responsible for additional compensation due for the duration of total disability. The fund established under section 306.2 of the act (77 P. S. § 517), from which these payments are to be made, shall be maintained as follows:

(i) Self-insured employers shall pay assessments in amounts determined by the following:

Amount of Compensation Paid by a Self-insured Employer During the Preceding Calendar Year	Total Amount of Compensation Paid by All Insurers During the Preceding Calendar Year	×	The Amount Expended from the Subsequent Injury Fund during the Preceding Calendar Year
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(ii) The amount expended from the Subsequent Injury Fund during the preceding calendar year, minus the total amount owed by all self-insured employers, as calculated under subparagraph (i), shall equal the aggregate amount to be collected by insurance carriers.

(b) Insurance carriers shall remit to the Bureau assessment amounts as follows:

Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier for the Preceding Calendar Year

Total Amount of Earned Premium Reported to the Insurance Department by all Insurance Carriers for the Preceding Calendar Year

× Aggregate Amount to be Collected by Insurance Carriers

(c) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the Bureau will calculate the assessment amount as though an earned premium amount of zero were reported to the Insurance Department.

(d) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Insurance Commissioner.

(e) Self-insured employers and runoff self-insurers shall pay assessments directly to the Bureau.

(f) The claimant shall file a Claim Petition for Additional Compensation from the Subsequent Injury Fund Pursuant to Section 306.1 of the Workers' Compensation Act, Form LIBC-375, as provided in section 315 of the act (77 P. S. § 602) or the claim will be forever barred.

**§ 121.23. Supersedeas fund.**

(a) Annual assessments under section 443 of the act (77 P. S. § 999) shall be in amounts determined by the following:

(1) Self-insured employers shall pay assessments in amounts determined by the following:

Amount of Compensation Paid by a Self-insured Employer During the Preceding Calendar Year

Total Amount of Compensation Paid by All Insurers During the Preceding Calendar Year

× The Amount of Supersedeas Payments Made or Accrued as Payable during the Preceding Calendar Year

(2) The amount of supersedeas payments made or accrued as payable during the preceding year, minus the total amount owed by all self-insured employers, as calculated under paragraph (1), shall equal the aggregate amount to be collected by insurance carriers.

(3) Insurance carriers shall remit to the Bureau assessment amounts as follows:

Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier for the Preceding Calendar Year

Total Amount of Earned Premium Reported to the Insurance Department by all Insurance Carriers for the Preceding Calendar Year

× Aggregate Amount to be Collected by Insurance Carriers

(b) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the Bureau will

calculate the assessment amount as though an earned premium amount of zero were reported to the Insurance Department.

(c) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Insurance Commissioner.

(d) Self-insured employers and runoff self-insurers shall pay assessments directly to the Bureau.

(e) Applications for reimbursement shall be filed directly with the Bureau on an Application for Supersedeas Fund Reimbursement, Form LIBC-662. Applications will be processed administratively to determine whether the parties can agree on the payment or amount of reimbursement. If the payment or amount of reimbursement cannot be agreed upon, the matter will be assigned to a workers' compensation judge for a formal hearing and adjudication.

**§ 121.24. (Reserved).**

**§ 121.25. Issuance of compensation payments.**

Compensation payments shall be issued according to the following:

(1) Unless the claimant and the employer have executed an Authorization for Alternative Delivery of Compensation Payments, Form LIBC-10, or unless payment is otherwise ordered by a workers' compensation judge, the Board or any court, a claimant's payment for workers' compensation or occupational disease compensation shall be mailed by first-class mail to the claimant's last known address, and may not be made payable to, or delivered to, an attorney unless the attorney is the administrator or executor of the claimant's estate, a court-appointed trustee, a court-appointed guardian or acting in some other fiduciary capacity.

(2) Notice of the first payment to a claimant shall be sent to counsel of record by the insurer or self-insured employer.

(3) If a workers' compensation judge or the Board approves attorneys' fees and costs, a payment for fees and costs, separate from a compensation payment, shall be made payable, and issued, to the claimant's attorney.

(4) An employer may not require a claimant to appear at a specific place to receive compensation payments.

**§ 121.26. (Reserved).**

**§ 121.27. Orders to show cause.**

(a) The Department may serve an order to show cause on a respondent for an alleged violation of the act or regulations contained in this part. The order to show cause will contain the particulars of the alleged violation and the procedures for filing an answer under subsection (b).

(b) A written answer to the order to show cause may be filed no later than 20 days after the date that the order to show cause is served on the respondent. The answer must admit or deny the allegations in the order to show cause and state respondent's defense. General denials that are unsupported by specific facts will not comply with this section and may be deemed a basis for entry of a final order because the respondent has raised no issues requiring further proceedings. The facts in the order to show cause may be deemed admitted if a respondent fails to file a timely answer under this subsection.

(c) The Director of Adjudication will assign the order to show cause to a presiding officer who will schedule a

hearing. The presiding officer will provide notice to the parties of the hearing date, time and place.

(d) The hearing will be conducted under this section and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to the extent not specifically superseded in subsection (h). The presiding officer will not be bound by strict rules of evidence.

(e) Hearings will be stenographically recorded and the transcript of the proceedings will be part of the record.

(f) If the respondent fails to appear in person or by counsel at the scheduled hearing without adequate excuse, the presiding officer will decide the matter on the basis of the order to show cause and evidence presented.

(g) The Department has the burden to demonstrate, upon a preponderance of the evidence, that the respondent failed to comply with the act or regulations in this part.

(h) This section supersedes 1 Pa. Code §§ 35.14, 35.37, 35.131, 35.201 and 35.221.

**§ 121.27a. Bureau intervention and penalties.**

(a) If the workers' compensation judge determines that penalties resulting from an alleged violation of the act or regulations in this part may be imposed on a party under section 435 of the act (77 P.S. § 991), the workers' compensation judge may notify the Bureau in writing within 20 days of the notice of the alleged violation.

(b) The workers' compensation judge will include a description of the nature of the alleged violation in the notice and will provide the Bureau with an opportunity to participate in the proceeding as an intervening party. The workers' compensation judge simultaneously will provide a copy of the notification to all parties.

(c) Within 20 days after receipt of the notice, the Bureau will notify the workers' compensation judge and the parties of its decision to participate in the proceeding or to allow the proceeding to continue without intervention. If the Bureau fails to respond to the notification within 20 days, the Bureau will not have intervened. By not intervening before the workers' compensation judge, the Bureau has not waived its right to intervene in a different forum or following additional notice from the workers' compensation judge in the same proceeding.

(d) Nothing in this section may be construed to require the Bureau to intervene in any matter or to restrain a workers' compensation judge from notifying the Bureau of a further alleged violation of the act or regulations in a case.

(e) This section supplements §§ 131.121 and 131.122 (relating to penalty proceedings initiated by a party; and other penalty proceedings).

**§ 121.28. (Reserved).**

**§ 121.30. Section 306(h) payments (77 P.S. § 583).**

(a) Under section 306(h) of the act (77 P.S. § 583), insurers shall submit a listing of all pre-August 31, 1993 cases on which compensation is still payable under sections 306(a), 306(c)(23) or 307 of the act (77 P.S. §§ 511, 513(c)(23), 561, 562 and 542), in an amount less than \$100 per week on January 1, 2007. This listing must contain the following particulars:

- (1) Bureau code.
- (2) Name of claimant.
- (3) Social Security number.

- (4) Claimant's date of birth.
- (5) Date of injury.
- (6) Name of employer.
- (7) Insurer claim number.
- (8) Current weekly compensation rate.

(b) If the insurer seeks reimbursement from the Bureau under section 306(h) of the act, it shall submit the following to the Bureau on a quarterly basis: a notarized statement, signed by an officer of the company, containing an itemized list of payments made to all claimants, submitted no later than the 10th day of the month following the quarter for which advance reimbursement payments have been made. Each itemized entry must contain the following information: the claimant's name, Social Security number and the total amount paid each claimant per quarter.

(c) Changes in a payment schedule to an individual shall be reported to the Bureau within 10 days of the change. The Bureau will take credit in the following reimbursable quarter for an overpayment caused by change in a payment schedule.

(d) For auditing purposes, every insurer shall keep records for 3 years from the date of each payment made under this section. The records will be made available for inspection by the Bureau during normal business hours.

(e) If the Bureau believes that the insurer primarily liable for compensation under the act has failed to make a payment under the act and this section, the Bureau may pay compensation directly to the claimant, for the portion of the compensation which is payable by the Commonwealth under section 306(h) of the act until the insurer resumes payment of compensation. The Bureau is not required to initiate direct payments to a claimant when the insurer is making full payment of the compensation but is not seeking reimbursement under this section.

**§ 121.31. Workmen's Compensation Administration Fund.**

(a) Annual assessments on self-insured employers, under section 446(b) of the act (77 P.S. § 1000.2(b)), shall be in amounts determined by the following:

Amount of Compensation Paid by a Self-insured Employer during the Preceding Calendar Year	×	The Approved Budget of the Workmen's Compensation Administration Fund for the Current Fiscal Year
Total Amount of Compensation Paid by All Insurers During the Preceding Calendar Year		

(b) The approved budget of the Workmen's Compensation Administration Fund for the current fiscal year, minus the total amount owed by all self-insured employers, as calculated under subsection (a), shall equal the aggregate amount to be collected by insurance carriers.

(c) Insurance carriers shall remit to the Bureau assessment amounts as follows:

Amount of Earned Premium as Reported to the Insurance Department, by an Insurance Carrier for the Preceding Calendar Year

Total Amount of Earned Premium Reported to the Insurance Department by all Insurance Carriers for the Preceding Calendar Year

× Aggregate Amount to be Collected by Insurance Carriers

(d) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the Bureau will calculate the assessment amount as though an earned premium amount of zero were reported to the Insurance Department.

(e) Insured employers shall remit assessment amounts through their insurance carriers, according to procedures defined by the approved rating organization and approved by the Insurance Commissioner.

(f) Self-insured employers and runoff self-insurers shall pay assessments directly to the Bureau.

**§ 121.32. Office of Small Business Advocate.**

(a) The Bureau may collect annual assessments imposed on insurance carriers, but not on self-insured employers or runoff self-insurers, for the purpose of funding the Office of Small Business Advocate in accordance with section 1303 of the act (77 P. S. § 1041.3). Insurance carriers shall be directly liable to the Bureau for prompt payment of assessments for the Office of Small Business Advocate, as provided in the act and this chapter.

(b) Annual assessments under section 1303 of the act shall be in amounts as determined by the following formula:

Amount of Compensation Paid by an Insurance Carrier, but not a Self-insured Employer or Runoff Self-insurer, During the Preceding Calendar Year

Total Amount of Compensation Paid by All Insurance Carriers, but not Self-insured Employers or Runoff Self-insurers, During the Preceding Year

× The Approved Budget of the Office of Small Business Advocate for the Current Fiscal Year

**§ 121.33. Collection of special funds assessments.**

(a) The Bureau will collect assessments for the special funds by calculating the total amount of the following:

(1) What each self-insured employer is liable for paying to the Bureau.

(2) What each insurance carrier is responsible for collecting from insured employers and remitting to the Bureau.

(b) Assessments for the special funds will be imposed, collected and remitted as follows:

(1) The Bureau will transmit to each insurance carrier and self-insured employer a notice of assessment amount to be collected, which will specify the amount calculated under subsection (a) and the date on which the amount is due.

(2) Each self-insured employer shall timely remit to the Bureau the amount calculated under subsection (a)(1).

(3) Each insurance carrier shall collect payment for assessments from insured employers according to the procedures defined by the approved rating organization and approved by the Insurance Commissioner and timely remit payment to the Bureau.

(4) The failure of an insurance carrier to receive payment from an insured employer does not limit an insurance carrier's responsibility to collect and timely remit to the Bureau the total amount calculated under subsection (a)(2).

**§ 121.34. Objections to assessments.**

(a) A party receiving a notice of assessment amount to be collected from the Bureau may, within 15 days of receipt, object to the assessment reflected in the notice on the basis that it is excessive, erroneous, unlawful or invalid. Insured employers retain all rights provided under section 717 of the act (77 P. S. § 1035.17).

(b) Objections must be set forth in numbered paragraphs, specifically state the facts necessary to determine the validity of the challenged assessment or assessment amount and be accompanied by a supporting memorandum documenting the legal grounds for the objections.

(c) An objection to assessment or assessment amount shall be accompanied by a proof of service as specified in 1 Pa. Code § 33.35 (relating to proof of service) and a notice of appearance as specified in 1 Pa. Code § 31.24 (relating to notice of appearance), and be served on all interested parties as specified in 1 Pa. Code § 33.32 (relating to service by a participant).

(d) An objection not conforming to this section or the act will be rejected by the Bureau. The Bureau will notify the objecting party of the specific reasons for the rejection. The objecting party shall have 30 days to cure any deficiency.

(e) Upon receipt of an objection which conforms to this section and the act, the Department will hold a hearing in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). After the hearing, the Department will record its findings on any objections and will transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with the findings. The amount shall be paid by the objector within 10 days after receipt of the findings. After payment has been made, the objector may initiate an action in the appropriate court to recover the payment of the assessment or any portion thereof. An insurer may not maintain an action to recover payment unless it has previously objected under subsection (a).

**§ 121.35. Annual reports of compensation paid.**

Every annual report of compensation paid made by an insurer under sections 445 and 446(e) of the act (77 P. S. §§ 1000.1 and 1000.2(e)) must include amounts paid by an insurer for which policyholders have agreed to reimburse the insurer under deductible policies issued under section 448 of the act (77 P. S. § 1000.4).

[Pa.B. Doc. No. 07-1393. Filed for public inspection August 3, 2007, 9:00 a.m.]

# Title 61—REVENUE

## TREASURY DEPARTMENT

### [61 PA. CODE CH. 951]

#### Estimation Calculations for Determining Unclaimed Property Liability

The Treasury Department (Department) amends Chapter 951 (relating to abandoned and unclaimed property) to read as set forth in Annex A.

##### *Omission of Proposed Rulemaking*

Under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), the Department is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) if the criteria of section 204 of the CDL are met.

Under authority of section 204(1)(iii) of the CDL, proposed rulemaking has been omitted because the administrative amendments relate to Department procedure and practice regarding petitions for review. See *Soja v. Pennsylvania State Police*, 402 A.2d 281 (Pa. Commw. 1979), affirmed 455 A.2d 613 (Pa. 1982).

##### *Description of the Final-Omitted Rulemaking*

The final-omitted rulemaking updates the Department's regulations governing petitions for review. If a person or entity is aggrieved by a decision issued by a bureau or office within the Department, that person or entity may file a petition for review. A hearing is conducted, but the five-person Abandoned and Unclaimed Property Review Committee (Committee) previously specified in the regulation is replaced with a presiding officer to conduct hearings on petitions. Practice and procedure is now governed by 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), which is more akin to the practice of other Commonwealth administrative agencies.

Section 951.1 (relating to definitions) is amended, §§ 951.2—951.8 are rescinded and §§ 951.21 and 951.31—951.33 are added.

##### *Statutory Authority*

The final-omitted rulemaking is authorized under section 1301.26 of the Disposition of Abandoned and Unclaimed Property Act (act) (72 P. S. § 1301.26).

##### *Fiscal Impact and Paperwork Requirements*

The final-omitted rulemaking will not have a fiscal impact on, or create additional paperwork for, the regulated community or the political subdivisions of the Commonwealth. The substitution of a presiding officer for the five-person Committee to hear petitions will result in a cost savings to the Commonwealth.

##### *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on June 13, 2007, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Finance Committee and the House Appropriations Committee. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on July 18, 2007, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 19, 2007, and approved the final-omitted rulemaking.

##### *Additional Information*

For additional information about the final-omitted rulemaking, contact Deborah B. Eskin, Deputy Chief Counsel, Treasury Department, 127 Finance Building, Harrisburg, PA 17120, (717) 787-2740, deskin@patreasury.org.

##### *Findings*

The Department finds that:

(1) Public notice of the Department's intention to amend its regulations under the procedures in sections 201 and 202 of the CDL has been omitted under the authority of section 204 of the CDL because the amendments relate to Department procedures and practice regarding petitions for review.

(2) The amendment of the Department's regulations in the manner provided in this order is necessary and appropriate for updated and cost-effective administrative hearings.

##### *Order*

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

(a) The regulations of the Department, 61 Pa. Code Chapter 951, are amended by amending § 951.1, by deleting §§ 951.2—951.8 and by adding §§ 951.21 and 951.31—951.33 to read as set forth in Annex A.

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

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

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

ROBIN L. WIESSMANN,  
*State Treasurer*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 4411 (August 4, 2007).)*

**Fiscal Note:** Fiscal Note 64-4 remains valid for the final adoption of the subject regulations.

#### Annex A

#### TITLE 61. REVENUE

#### PART VIII. TREASURY DEPARTMENT

#### CHAPTER 951. ABANDONED AND UNCLAIMED PROPERTY

#### Subchapter A. GENERAL PROVISIONS

#### § 951.1. Definitions.

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

*Act*—The Disposition of Abandoned and Unclaimed Property Act (72 P. S. §§ 1301.1—1301.29).

*Bureau*—The Bureau of Unclaimed Property within the Department.

*Claimant*—One who submits a property claim or a claim for a payment otherwise alleged to be due from the Department.

*Department*—The Treasury Department of the Commonwealth.

*Final demand*—The Department's notification to a holder that unclaimed and abandoned property shall be paid or delivered within a given period of time. Notification may be in the form of a summary of audit findings or a final decision on a petition for review.

*Holder*—As defined in section 1301.1 of the act (72 P. S. § 1301.1).

*Property claim*—An assertion of ownership or the right to possess certain abandoned and unclaimed property held in the custody and control of the Department.

*State Treasurer*—The head of the Department, as set forth in section 206 of The Administrative Code of 1929 (71 P. S. § 66).

*Summary of audit findings*—

(i) Notice sent to a holder after an audit has been performed stating audit findings and notifying the holder of the abandoned and unclaimed property due the Department.

(ii) The term also includes an assessment made by the Department for late filing or late delivery of abandoned and unclaimed property.

#### §§ 951.2—951.8. (Reserved).

### Subchapter B. REVIEW OF ADMINISTRATIVE DECISIONS

Sec.  
951.21 Petitions for review

#### § 951.21. Petitions for review.

(a) A claimant or a holder who is aggrieved by a decision issued by the Department may file a petition for review as set forth in subsection (c).

(b) The State Treasurer will designate a presiding officer to exercise the powers and duties of the State Treasurer with respect to matters concerning petitions for review.

(1) Except as otherwise provided herein, practice and procedure before the presiding officer will be governed by 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and 2 Pa.C.S. §§ 101—106, 501—507 and 701—704 (relating to general provisions; practice and procedure of Commonwealth agencies; and judicial review of Commonwealth agency action).

(2) The presiding officer will issue a final decision and order, including findings of fact and conclusions of law.

(c) A petition for review shall be filed within 30 days after the mailing date of the Department's decision.

(1) Petitions shall be filed with the Prothonotary, Office of Chief Counsel, Room 127, Finance Building, Harrisburg, Pennsylvania 17120.

(2) Petitions must be in writing, be signed by the petitioner and contain the following:

(i) The petitioner's name, address and telephone number.

(ii) The name, address and telephone number of the authorized representative, if any.

(iii) A detailed statement in separate numbered paragraphs of the facts and grounds relied upon. If based upon a written document, a copy of the document, or the material part of the document, shall be attached.

(iv) A statement specifying the relief to which the petitioner deems itself entitled, which cites the legal authority relied upon.

(v) A statement that either a hearing is requested or the right to a hearing is waived and the petitioner is resting the case on the petition and record, with or without a brief.

(vi) A signed statement certifying that the facts contained in the petition are true and correct to the petitioner's knowledge and belief, and that the petition is not made for purposes of delay.

(3) The presiding officer may, in writing, require a petitioner to furnish additional information that may be necessary to define the issues or to determine the case. The presiding officer may deny the petition for failure by the petitioner to furnish the additional information within a stated reasonable length of time.

### Subchapter C. ABANDONED AND UNCLAIMED PROPERTY

Sec.  
951.31 Audit of holder records.  
951.32 Proceeding to compel payment or delivery.  
951.33 Assertion of property claims.

#### § 951.31. Audit of holder records.

(a) A holder subject to an examination of records as provided for in section 1301.23(a) of the act (72 P. S. § 1301.23(a)) shall comply with requests by the State Treasurer or an authorized third party to make records available for examination.

(b) When a holder's records do not exist or are insufficient for examination, the State Treasurer may apply sampling and estimation procedures to determine a holder's liability. These procedures will be applied in accordance with standards of the American Institute of Certified Public Accountants (AICPA) and the United States General Accounting Office (USGAO).

(c) A holder who is aggrieved by a summary of audit findings may file a petition for review under Subchapter B (relating to review of administrative decisions). If the petition is not timely filed, the summary of audit findings will be deemed to be a final demand due and payable within 30 days after the expiration of the filing period in § 951.21(c) (relating to petitions for review).

#### § 951.32. Proceeding to compel payment or delivery.

If a holder fails to pay or deliver property subject to the Department's final demand, along with an accompanying holder report, the State Treasurer may bring an enforcement action in a court of appropriate jurisdiction under section 1301.24 of the act (72 P. S. § 1301.24).

#### § 951.33. Assertion of property claims.

(a) A claimant for abandoned and unclaimed property under the custody and control of the Department shall submit forms and documentation required by the Bureau.



(b) A claimant upon whose claim the Bureau has taken no action within 90 days after all forms and documentation were submitted may bring an action in Commonwealth Court under section 1301.21 of the act (72 P. S. § 1301.21).

(c) A claimant whose claim the Bureau denies may file a petition for review under Subchapter B (relating to review of administrative decisions).

(d) A claimant who is aggrieved by the presiding

officer's final decision and order on a petition for review of property claim may commence an action in Commonwealth Court within 30 days after the entry of the order in accordance with section 1301.21 of the act. The action shall be tried de novo without a jury.

[Pa.B. Doc. No. 07-1394. Filed for public inspection August 3, 2007, 9:00 a.m.]

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