

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 250]

Corrective Amendment to 25 Pa. Code Chapter 250, Appendix A, Tables 1, 2, 3b and 4b

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25 Pa. Code Chapter 250 Appendix A, Tables 1, 2, 3b and 4b, as deposited with the Legislative Reference Bureau, and the official text published at 41 Pa.B. 230 (January 8, 2011) and text which will be codified in the March 2011 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 436). Amendments to the tables made by the agency were not included in the final-form rulemaking published at 41 Pa.B. 230.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code Chapter 250 Appendix A, Tables 1, 2, 3b and 4b. The corrective amendment to 25 Pa. Code Chapter 250 Appendix A, Tables 1, 2, 3b and 4b is effective as of January 8, 2011, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct versions of 25 Pa. Code Chapter 250 Appendix A, Tables 1, 2, 3b and 4b appear in Annex A, with ellipses referring to the existing text of the tables.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUBPART D. ENVIRONMENTAL HEALTH AND SAFETY

CHAPTER 245. ADMINISTRATION OF THE LAND RECYCLING PROGRAM

APPENDIX A

APPENDIX A

**TABLE 1—MEDIUM-SPECIFIC CONCENTRATIONS (MSCs)
FOR ORGANIC REGULATED SUBSTANCES IN GROUNDWATER**

REGULATED SUBSTANCE	CASRN	USED AQUIFERS				NON-USE AQUIFERS	
		TDS ≤ 2500		TDS > 2500			
		R	NR	R	NR	R	NR
		*	*	*	*	*	*
MALATHION	121-75-5	500 H	500 H	50,000 H	50,000 H	140,000 S	140,000 S
		*	*	*	*	*	*
PROMETON	1610-18-0	400 H	400 H	40,000 H	40,000 H	400 H	400 H
		*	*	*	*	*	*
TETRACHLOROETHANE, 1,1,1,2-	79-34-5	0.84 N	04.3 N	84 N	430 N	84 N	430 N
		*	*	*	*	*	*
TRIFLURALIN	1582-09-8	10 H	10 H	1,000 H	1,000 H	10 H	10 H
		*	*	*	*	*	*

All concentrations in µg/L

R = Residential

NR = Non-Residential

M = Maximum Contaminant Level

H = Lifetime health advisory level

G = Ingestion

N = Inhalation

S = Aqueous solubility cap

**TABLE 2—MEDIUM-SPECIFIC CONCENTRATIONS (MSCs)
FOR INORGANIC REGULATED SUBSTANCES IN GROUNDWATER**

REGULATED SUBSTANCE	CASRN	USED AQUIFERS				NON-USE AQUIFERS	
		TDS ≤ 2500		TDS > 2500			
		R	NR	R	NR	R	NR
		*	*	*	*	*	
BORON AND COMPOUNDS	7440-42-8	6,000 H	6,000 H	600,000 H	600,000 H	6,000,000 H	6,000,000 H
		*	*	*	*	*	
PERCHLORATE	7790-98-9	15 H	15 H	1,500 H	1,500 H	15,000 H	15,000 H
		*	*	*	*	*	

SECONDARY CONTAMINANTS			
REGULATED SUBSTANCE	CASRN	SMCL	UNITS
ALUMINUM	7429-90-5	200	µg/L
CHLORIDE	7647-14-5	250,000	µg/L
FLUORIDE	7681-49-4	2,000	µg/L
IRON	7439-89-6	300	µg/L
MANGANESE	7439-96-5	50	µg/L
SULFATE	7757-82-6	250,000	µg/L

All concentrations in ug/L (except asbestos)
M = Maximum Contaminant Level
H = Lifetime Health Advisory Level
SMCL = Secondary Maximum Contaminant Level
G = Ingestion
N = Inhalation

R = Residential
NR = Nonresidential

**TABLE 3—MEDIUM-SPECIFIC CONCENTRATIONS (MSCs)
FOR ORGANIC REGULATED SUBSTANCES IN SOIL
B. Soil to Groundwater Numeric Values¹**

REGULATED SUBSTANCE	CASRN	Used Aquifers												Soil Buffer Distance (feet)	
		TDS ≤ 2500						TDS > 2500							
		Residential		Non-Residential		Residential		Non-Residential		Residential		Non-Residential			
100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value
ACETOPHENONE	98-86-2	370	200 E	1,000	540 E	10,000	10,000 C	10,000	10,000 C	370	200 E	1,000	540 E	NA	
					*	*	*	*	*	*	*	*	*		
					*	*	*	*	*	*	*	*	*		
MALATHION	121-75-5	50	170 E	50	170 E	5,000	10,000 C	5,000	10,000 C	10,000	10,000 C	10,000	10,000 C	20	
					*	*	*	*	*	*	*	*	*		
PHTHALIC ANHYDRIDE	85-44-9	7,300	2,300 E	20,000	6,200 E	190,000	190,000 C	190,000	190,000 C	190,000	190,000 C	190,000	190,000 C	NA	
					*	*	*	*	*	*	*	*	*		
PROMETON	1610-18-0	40	39 E	40	39 E	4,000	3,900 E	4,000	3,900 E	40	39 E	40	39 E	NA	
					*	*	*	*	*	*	*	*	*		
TETRACHLOROETHANE, 1,1,2,2-	79-34-5	0.08	0.026 E	0.43	0.13 E	8	2.6 E	43	13 E	8	2.6 E	43	13 E	NA	
					*	*	*	*	*	*	*	*	*		
TRICHLORO-PHENOL, 2,4,5-	95-95-4	370	2,300 E	1,000	6,100 E	37,000	190,000 C	100,000	190,000 C	100,000	190,000 C	100,000	190,000 C	15	
					*	*	*	*	*	*	*	*	*		
TRIFLURALIN	1582-09-8	1	1.9 E	1	1.9 E	100	190 E	100	190 E	1	1.9 E	1	1.9 E	30	
					*	*	*	*	*	*	*	*	*		

¹ For other options see Section 250.308

All concentrations in mg/kg

E - Number calculated by the soil to groundwater equation in Section 250.308

C - Cap

NA - The soil buffer distance option is not available for this substance

**TABLE 4—MEDIUM-SPECIFIC CONCENTRATIONS (MSCs)
FOR INORGANIC REGULATED SUBSTANCES IN SOIL
B. Soil to Groundwater Numeric Values¹**

REGULATED SUBSTANCE	CASRN	Used Aquifers												Soil Buffer Distance (feet)			
		TDS ≤ 2500						TDS > 2500									
		R		NR		R		NR		R		NR					
100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	100 X GW MSC	Generic Value		
BORON AND COMPOUNDS	7440-42-8	600	1,900	600	1,900	60,000	190,000	190,000	190,000	60,000	190,000	190,000	190,000	190,000	190,000	190,000	30
		1.5	0.17	1.5	0.2	150	17	17	17	150	17	17	17	1,500	170	1,500	170
PERCHLORATE	7790-98-9					*	*	*	*	*	*	*	*	*	*	*	

¹ For other options see Section 250.308
 All concentrations in mg/kg
 R - Residential
 NR - Non-Residential
 NA - Not Applicable

[Pa.B. Doc. No. 11-248. Filed for public inspection February 11, 2011, 9:00 a.m.]

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY [34 PA. CODE CH. 61]

Unemployment Compensation; Administration

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits and Office of Unemployment Compensation Tax Services, amends Chapter 61 (relating to administration).

A. Statutory Authority

This final-form rulemaking is promulgated under section 201(a) of the Unemployment Compensation Law (law) (43 P.S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

B. Background and Description of this Final-Form Rulemaking

This final-form rulemaking, which covers ten sections of Chapter 61, updates the Department's regulations to conform to current law and practice. The particular changes are as follows.

Section 61.1 (relating to definitions) contains definitions for Part II, Subpart A (relating to unemployment compensation). Definitions regarding the organization of the Department are amended or added to reflect the current structure of the Department. Also, obsolete definitions are deleted.

Section 61.3 (relating to wages) is amended to distinguish the tax treatment of delayed wage payments from the existing approach that will continue to be used for benefit purposes. For purposes of taxation, this section will treat wages as paid on the date the employer actually pays them. This treatment reflects the decision of the United States Supreme Court in *United States v. Cleveland Indians Baseball Company*, 532 U.S. 200 (2001). In that case, the Court held that, for Federal employment tax purposes, back wages should be attributed to the date on which they actually are paid. The Department is required to follow this decision when allocating wages for tax purposes because section 4(x)(6) of the law (43 P.S. § 753(x)(6)) requires that payments subject to taxation under the Federal Unemployment Tax Act (26 U.S.C.A. §§ 3301–3311) also are taxed as wages under the law. For benefits purposes, however, the existing treatment of wages remains in effect. That is, when a payment of wages is delayed, the wages are considered paid on the day on which the employer generally pays amounts definitely assignable to a payroll period.

This section also is amended regarding the valuation of remuneration made in mediums other than cash. In addition to prescribing the general rule that the value of noncash compensation is its fair market value, the regulation specifies minimum values to be placed on meals and lodging by reference to recognized Federal standards, subject to rebuttal by the employer.

When sick pay is paid to a worker by a third party, § 61.3a (relating to third party sick pay) provides that the third party is responsible to report and pay unemployment compensation (UC) taxes on the sick pay. An exception provides that the third party may meet certain requirements in order to shift that responsibility to the employer.

Section 61.11 (relating to persons eligible for compensation and expenses) provides that an agent of an employer, like the employer he represents, is ineligible for witness fees for participating in an administrative proceeding if the employer is an interested party in the proceeding.

The final-form amendments to § 61.12 (relating to reimbursable items) delete specific amounts for the mileage allowance and the per diem fee for witnesses. As amended, this section provides that witnesses may be paid compensation and expenses in accordance with 42 Pa.C.S. (relating to Judicial Code).

Sections 61.21–61.25 are rescinded and replaced by § 61.25 (relating to confidentiality of information and fees), which implements new Federal confidentiality requirements that were recently promulgated by the United States Department of Labor.

C. Comments

Notice of proposed rulemaking was published at 40 Pa.B. 2639 (May 22, 2010). The Department received comments from Interstate Tax Services, Inc. (ITS), Community Legal Services (CLS) and the Independent Regulatory Review Commission (IRRC). The Senate Labor and Industry Committee and the House Labor Relations Committee did not comment.

§ 61.1. Definitions

Comment: This rulemaking changes the definition of “Bureau” from “Bureau of Employment Security of the Commonwealth” to “the Department.” Because “Department” is already defined in § 61.1, IRRC questioned the need for the revised definition of “Bureau” and suggested that it be eliminated.

Response: There is no longer a Bureau of Employment Security within the Department. However, this final-form rulemaking and the companion rulemaking concerning Chapter 65 (relating to employee provisions) do not amend all of the existing regulations in these chapters. See 41 Pa.B. 848 (February 12, 2011). (To accommodate existing references to the “Bureau” in the unaffected regulations, the definition of “Bureau” is being amended.

§ 61.12. Reimbursable items

Comment: The proposed amendment to this section states, in part, that an individual “entitled to reimbursement under § 61.11 . . . may be paid compensation and expenses.” IRRC commented that individuals may be eligible for compensation and expenses but are not necessarily “entitled” to them. IRRC suggested that the Department change the language of this section to reflect that compensation and expenses are authorized but not mandatory in every situation.

Response: The Department changed the final-form rulemaking to refer to individuals who are “eligible” for compensation and expenses, as suggested by IRRC.

§ 61.25. Confidentiality of information and fees

Comment: Subsection (a)(3)(ii) and (iii) allows disclosure of UC information to a claimant or an employer under certain circumstances. ITS, CLS and IRRC suggested that this section should also allow disclosure to a representative of a claimant or employer. In addition, CLS suggested that this section specify the extent to which a release is required for disclosure to an agent and should excuse the need for a release to the extent allowed by the Federal disclosure rules. IRRC noted that the Federal disclosure rules permit disclosure to an agent only if the disclosure is authorized by state law. IRRC inquired whether disclosure to agents is currently autho-

ized by statute and whether the law would permit the Department to adopt a regulation allowing disclosure to agents.

Response: The Department revised the final-form rule-making to allow disclosure to an agent, and to contain criteria for disclosure to an agent that is similar to the criteria suggested by CLS. In response to IRRC's questions, the law does not expressly address disclosure of information to an agent of an employer or claimant. The Department's broad regulatory authority in section 201(a) of the law and 207(a)(1) of the law (43 P.S. § 767) permits the Department to adopt a regulation allowing disclosure to agents. See *Slippery Rock Area School District v. Unemployment Compensation Board of Review*, 603 Pa. 374, 983 A.2d 1231 (2009).

Comment: Subsection (a)(2)(ii) provides that UC information is not competent evidence in any action or proceeding in any court or other tribunal. Subsection (a)(4)(ii) provides that information disclosed by the Department or the Board of Review to a person under the regulation may not be redisclosed by the recipient to another person or before any court or other tribunal. Subsection (a)(5) contains exceptions to these restrictions. One of the exceptions is information disclosed to a claimant or an employer of the claimant under subsection (a)(3)(ii) for the proper determination of the claimant's benefit application and claims. Therefore, a claimant or employer who receives UC information in connection with the determination of the claimant's eligibility for benefits is not prohibited from redisclosing that information or using it as evidence in an action or proceeding outside of the law. CLS commented that the drafting of these provisions so that subsection (a)(2)(ii), (4)(ii) and (5) be read together is confusing.

Response: The exceptions in subsection (a)(5) apply to both subsection (a)(2)(ii) and (4)(ii). Therefore, it is necessary to read subsection (a)(2)(ii) in connection with subsection (a)(5) and, similarly, to read subsection (a)(4)(ii) in connection with subsection (a)(5). Both subsection (a)(2)(ii) and (4)(ii) contain language indicating that they are subject to subsection (a)(5).

Comment: IRRC stated that the Department should clarify its intent regarding the use of information obtained by a claimant during a UC proceeding in other legal forums and revise the regulation accordingly.

Response: The effect of subsection (a)(2)(ii), (4)(ii) and (5) reflects the Department's intent; that is, a claimant or employer who receives UC information in connection with the determination of the claimant's eligibility for benefits is not prohibited from redisclosing that information or using it as evidence in an action or proceeding outside of the law. The Department recognizes the impracticability of attempting to regulate the use of information by a claimant or an employer once the information has been released to them. Revising the regulation is not necessary.

Comment: CLS commented that claimants and employers should be allowed to use UC information, in addition to information provided to them in connection with the determination of the claimant's eligibility for UC, in legal proceedings other than proceedings under the law. CLS also commented that it is unclear whether the use of additional UC information is permitted under the regulation.

Response: Subsection (a)(2)(i) supplies the basic rule: "Unemployment compensation information is confidential and may be disclosed only as permitted in this subsection." Subsection (a)(3) enumerates six circumstances in

which the Department or the Board may disclose UC information. Under subsection (a)(3)(ii), disclosure may occur "[t]o a claimant, the last employer of the claimant, a base year employer of a claimant or a representative of any of the foregoing in accordance with paragraph (7), to the extent necessary for the proper determination of the claimant's application for benefits and claims for compensation." As previously discussed, a claimant or an employer of the claimant who receives information in connection with the determination of the claimant's eligibility is not restricted from redisclosing that information or using it in a proceeding outside of the law. However, the list of permissible disclosures in subsection (a)(3) does not include disclosure of UC information to a person, including a claimant or employer, for the purpose of litigation outside of the law. Moreover, the exceptions in subsection (a)(5) that UC information is not competent evidence do not include private litigation.

Comment: CLS questioned whether disclosure of UC information to claimants and employers for the purpose of litigation outside of the law is prohibited by Federal law.

Response: Under 20 CFR 603.4 (relating to what is the confidentiality requirement of Federal UC law), each state is required to maintain the confidentiality of its UC information. Permissible disclosures by a state UC agency that are exceptions to the rule of confidentiality are listed in 20 CFR 603.5 (relating to what are the exceptions to the confidentiality requirement). Disclosure of information about a claimant to an employer, or information about an employer to a claimant, for non-UC purposes is not permitted under 20 CFR 603.5.

Comment: Subsection (b) states, in part, that "[e]xcept as provided in section 702 of the law (43 P.S. § 862), the Department or the Board may charge a fee to a person seeking documents or information from the Department or the Board." Section 702 of the Law provides that "[n]o employer or employee shall be charged fees of any kind in any proceeding under this act by the department, the board, or any of its officers or agents." CLS commented that claimants and claimant representatives should not be charged a fee to obtain records from the Department or the Board.

Response: Because section 702 of the law supersedes the fee provision in subsection (b), a disclosure to a claimant or a claimant representative under subsection (a)(3)(ii) "to the extent necessary for the proper determination of the claimant's application for benefits and claims for compensation" will not involve a fee.

Comment: IRRC commented that "it is unclear as to what the Department or the Board is charging for. What type of documentation or information would require charging a fee."

Response: Under subsection (b), if a person requests information or documents from the Department or the Board that the Department or the Board possess in connection with the administration of the law, the Department and the Board are authorized to charge a fee to process the request and provide the requested documents or information. However, a fee will not be charged in situations when a fee is prohibited under section 702 of the law. Typically, the Department and the Board provide information to persons who request it in the form of copies of documents, computer printouts, or information in electronic media.

Comment: IRRC asked if a person would be charged for making a telephone inquiry.

Response: The Department will not charge a fee to a person simply because the person has made an information request, whether the request is communicated by telephone or otherwise. The Department will charge for the cost of processing a request for information and, if the requested information is available, the cost of providing the information. Also, it is unlikely that the Department would disclose information by telephone or in response to a telephone request, except information provided to a claimant or an employer of the claimant in connection with the determination of the claimant's eligibility for benefits and information provided to an employer in connection with the employer's UC tax liability or the administration of the employer's account. In accordance with section 702 of the law, a fee would not be charged in these situations.

Comment: Subsection (b) provides that the amount of the fee charged in connection with an information request is the amount necessary to compensate the Department or the Board for the cost to process the request and provide the requested information. The last sentence of the subsection states that "[t]he amount of the fee will be calculated by the Department within its discretion." IRRC commented that the last sentence of this subsection does not establish a binding norm or a standard that can be predicted by the regulated community and suggested that the amount of any fee be included in the final-form rulemaking.

Response: Under section 303(a)(8) of the Social Security Act (42 U.S.C.A. § 503(a)(8)), grant funds received by the Department from the Federal government for the administration of the law may be expended "solely for the purposes and in the amounts found necessary by the Board [Secretary of Labor] for the proper and efficient administration of such State law. . . ." Moreover, 20 CFR 603.8(a) (relating to what are the requirements for payment of costs and program income), regarding information disclosure provide that, subject to certain exceptions, "grant funds must not be used to pay any of the costs of making any disclosure of UC information." Because the Department may not use administrative funding provided by the Federal government to pay for the cost of processing information requests and providing information, subsection (b) allows the Department to charge a fee that will recover the Department's costs. A specific schedule of charges is inadequate for this purpose. Costs can inflate, sometimes rapidly. When this occurs, fixed fees in subsection (b) would result in undercharging for a period of time before the regulation can be amended. Some costs may not be anticipated and therefore would be omitted from a fee schedule. Some information requests do not lend themselves to a fixed structure of charges, such as requests that require computer programming. Flexibility with regard to fees is necessary in order to allow the Department to calculate a fee that includes all of the Department's costs.

Although subsection (b) gives the Department discretion, that discretion is not unbridled. It will be exercised for the purpose stated in the regulation; that is, to determine a fee that is sufficient to compensate for the cost for processing and producing the documents or information. Moreover, it is not unusual for a regulation to omit a fee schedule and instead authorize the agency to charge a fee based on the agency's cost. See, for example, 28 Pa. Code § 29.38(c) (relating to reports) ("The Department may set a reasonable per copy fee to cover the cost of making any copies authorized under this section.") and 4 Pa. Code § 86.3 (relating to policy governing the public areas of the Capitol Complex) ("The

Department may charge fees for the use of equipment, power and labor to set up, operate and remove equipment, clean up and for other appropriate requirements.").

Comment: Section 603.8(b) of 20 CFR provides that "grant funds may be used to pay costs associated with any disclosure of UC information if not more than an incidental amount of staff time and no more than nominal processing costs are involved in making the disclosure." IRRC asked if the Department receives grant funds, how will this Federal provision work in conjunction with subsection (b).

Response: The Department receives grant funds from the United States Department of Labor for the administration of the UC program under sections 301, 302 and 901 of the Social Security Act (42 U.S.C.A. §§ 501, 502 and 1101). Because subsection (b) states that the Department "may" charge a fee to process a request for UC information and provide the requested information, the Department would be permitted to abstain from charging a fee if the requirements of the Federal regulation are satisfied. It is the Department's experience, however, that the type of information request for which a fee would be charged under subsection (b) involves more than incidental staff time and nominal costs. Also, it is important to note that a number of information requests that require minimal time and expense individually can have a significant cumulative effect.

D. Affected Persons

Because this final-form rulemaking amends the definitions for the UC regulations, it potentially affects the 280,000 employers covered by the law and the UC claimants who file approximately 617,000 new applications for benefits each year. Specifically, this final-form rulemaking affects payors and recipients of delayed wages and noncash compensation, witnesses at UC administrative proceedings and third party payors of sick pay.

E. Fiscal Impact

Commonwealth and the regulated community

Some provisions of this final-form rulemaking reflect current practice and, as a result, would not involve any fiscal impact. The provision prescribing the date when wages are considered paid for tax purposes and the provision updating the valuation of noncash compensation could affect the amount of UC tax owed by certain employers and the latter provision could cause some claimants to qualify for an increased amount of UC benefits. While the Department is unable to estimate the amount of any monetary impact from these provisions, the number of employers and claimants affected is expected to be small and the overall fiscal impact is expected to be minimal.

Political subdivisions

This final-form rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the law.

General public

This final-form rulemaking does not affect the general public.

F. Paperwork Requirement

This final-form rulemaking will not impose additional paperwork requirements on the regulated community.

G. Sunset Date

The regulations will be monitored through practice and application. Thus, a sunset date is not designated.

H. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* with one exception. Section 61.3 will be in effect as to wages paid on or after January 1, 2012.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 7, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 2639, to IRRC and the Chairpersons of the Senate Labor and Industry Committee and the House Labor Relations Committee (Committees) 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 Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 15, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

J. Findings

The Department finds that:

(1) Public notice of intention to adopt the final-form rulemaking adopted 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 received were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 2639.

(4) This final-form rulemaking is necessary and suitable for the administration of the law.

K. Order

The Department, acting under the authority of the law, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 61, are amended by amending §§ 61.1, 61.3 and 61.11, by deleting §§ 61.21—61.24 and by adding § 61.3a to read as set forth at 40 Pa.B. 2639; and by amending § 61.12 and adding § 61.25 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order, 40 Pa.B. 2639 and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order, 40 Pa.B. 2639 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*. Section 61.3 will be in effect as to wages paid on or after January 1, 2012.

SANDI VITO,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 12-78 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 61. ADMINISTRATION

WITNESS FEES AND EXPENSES

§ 61.12. Reimbursable items.

(a) *Compensation and expenses.* An individual who is eligible for reimbursement under § 61.11 (relating to persons eligible for compensation and expenses) and who resides outside the place where his attendance is required, whether the residence is within or without this Commonwealth, may be paid compensation and expenses by the Department in accordance with 42 Pa.C.S. § 5903(b)—(g) (relating to compensation and expenses of witnesses).

(b) *Time limit for filing claims.* An allowance or fee payable under this section shall be paid only if a claim therefore is filed with the Board or the Department within 30 days from the date of the proceeding.

DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

§ 61.25. Confidentiality of information and fees.

(a) *Confidentiality.*

(1) *Definition.* For purposes of this subsection, “unemployment compensation information” means both of the following:

(i) Information in the possession of the Department or the Board pertaining to the administration of the law which reveals the name or any other identifying particular about an employer, employee or claimant or which could foreseeably be combined with publicly available information to reveal any identifying particular.

(ii) Information obtained directly or indirectly from the Department or the Board that is included in subparagraph (i) while in the possession of the Department or the Board.

(2) *Rule of confidentiality.*

(i) Unemployment compensation information is confidential and may be disclosed only as permitted in this subsection.

(ii) Except as provided in paragraph (5), unemployment compensation information will not be competent evidence and may not be used in any action or proceeding in any court or other tribunal.

(3) *Permissible disclosure.* The Department or the Board may disclose or authorize disclosure of unemployment compensation information only as follows:

(i) To officers and employees of the Department and members and employees of the Board in the administration of the law.

(ii) To a claimant, the last employer of the claimant, a base year employer of a claimant or a representative of any of the foregoing in accordance with paragraph (7), to

the extent necessary for the proper determination of the claimant's application for benefits and claims for compensation.

(iii) To an employer or a representative of an employer in accordance with paragraph (7), to the extent necessary for the proper determination of the employer's liability for reports and payments under the law and the proper administration of the employer's account.

(iv) To public employees in the performance of their public duties.

(v) As determined by the Department or the Board to be necessary for the proper administration of the unemployment compensation program.

(vi) As permitted by provisions of the law or as required or permitted by Federal law.

(4) *Redisclosure prohibited.*

(i) Officers and employees of the Department and members and employees of the Board to whom unemployment compensation information is disclosed under paragraph (3)(i) may not disclose the information to any person or before any court or other tribunal, except as authorized by the Department or the Board under paragraph (3).

(ii) Except as provided in paragraph (5), a person, other than an officer or employee of the Department or a member or employee of the Board, to whom unemployment compensation information is disclosed under paragraph (3) or otherwise may not disclose the information to any person or before any court or other tribunal without the prior, written authorization of the Department or the Board. This subparagraph applies to the initial person to whom the information is disclosed and subsequent recipients of the information.

(5) *Exceptions.* Paragraphs (2)(ii) and (4)(ii) do not apply to the following:

(i) A legal proceeding under the law or a statute administered or enforced by the Commonwealth.

(ii) Information disclosed to a claimant, employer or representative under paragraph (3)(ii) or (iii).

(iii) Information filed with the unified judicial system by the Department or the Board in the administration of the law.

(6) *Safeguards.* A person to whom unemployment compensation information is disclosed under paragraph (3) shall implement and maintain all safeguards required by the Department to protect the confidentiality of the information and comply with other terms and conditions specified by the Department in connection with disclosure of the information.

(7) *Representatives.* To receive information under paragraph (3)(ii) or (iii) on behalf of a claimant or an employer, a representative shall present a written authorization from the claimant or employer being represented, except in the following circumstances:

(i) A written authorization is impossible or impracticable to obtain as determined by the Department within its discretion and the representative presents other evidence of consent as required by the Department.

(ii) The representative is an elected official or a member of his staff performing constituent services and the representative presents reasonable evidence of consent.

(iii) The representative is an attorney and the attorney asserts that he is representing the claimant or employer.

(b) *Fees.* Except as provided in section 702 of the law (43 P. S. § 862), the Department or the Board may charge

a fee to a person seeking documents or information from the Department or the Board. The fee will be an amount sufficient to compensate the Department or the Board for the costs to process the request and, if the requested documents or information are available, the cost to provide the documents and information. The amount of the fee will be calculated by the Department within its discretion.

[Pa.B. Doc. No. 11-249. Filed for public inspection February 11, 2011, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 65]

Unemployment Compensation; Employee Provisions

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits, amends Chapter 65 (relating to employee provisions).

A. *Statutory Authority*

This final-form rulemaking is promulgated under section 201(a) of the Unemployment Compensation Law (law) (43 P. S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

B. *Background and Description of this Final-Form Rulemaking*

The purpose of this final-form rulemaking, which covers 24 sections of the Department's regulations, is to update the regulations to conform to current law and practice.

This final-form rulemaking rescinds 11 sections of Chapter 65 and deletes portions of additional regulations. The Department is rescinding and deleting regulations that are obsolete, inconsistent with the law or superseded by a subsequent statutory enactment. In some cases, the Department is deleting a provision and combining its content with other regulatory provisions to consolidate regulations with similar subject matter. In cases when a regulation is superfluous because it repeats an existing statutory provision, the regulation is rescinded or amended to refer to the law.

References to obsolete subdivisions of the Department are being deleted or replaced with references to the current agency or the Department generally. References to specific forms, some of which are outdated, are being deleted whenever possible.

In addition to the previous types of changes throughout the rulemaking, there are particular amendments described as follows.

The law provides that a claimant shall register for work to be eligible for compensation. Under existing regulations, a claimant fulfills this requirement by filing an application for benefits. However, the current regulations also provide that a work registration lapses under certain circumstances and shall be renewed. This is a technical and little known provision that may prejudice a claimant's eligibility. Section 65.11 (relating to work registration; effective period) is amended to provide that a work registration created by an application for benefits remains effective throughout the benefit year. Language in § 65.11 providing for the lapse and renewal of a work registration is deleted and § 65.12 is rescinded. Section 65.13, which provided for retroactive registration renewals, is no longer necessary and is rescinded.

Section 65.14 (relating to additional information) is amended to state that a claimant provide the information required by the Department to facilitate reemployment.

Sections 65.31 and 65.41 (relating to filing methods) formerly provided that claimants shall file applications for benefits and claims for compensation in person on paper forms at a local Department office. These regulations reflect outdated procedures. The Department no longer requires claimants to appear in person to conduct unemployment compensation (UC) related business. Therefore, § 65.31 is rescinded and § 65.41(a) is deleted and replaced with amended § 65.41. As amended, § 65.41 provides that a claimant may file an application for benefits by telephone, Internet, United States mail or fax transmission and may file a claim for compensation by telephone or the Internet.

As amended, § 65.42 (relating to application for benefits—effective date) specifies that an application for benefits is effective on the first day of the week in which the application is filed or deemed filed under § 65.43a (relating to extended filing).

Section 65.32 reflected an outdated procedure in which a claim for compensation was filed every week. That is, a claim for compensation had to be filed during the week immediately following the week of unemployment being claimed. This regulation is rescinded and replaced with amended § 65.43 (relating to claims for compensation—when to file). As amended, § 65.43 reflects the current procedure in which claims are filed biweekly and each biweekly pair of claims covers the preceding 2 weeks.

Section 65.33 provided that a claim for compensation may be filed late under certain circumstances. Sections 65.41 and 65.42(a) set forth the circumstances in which an application for benefits may be filed late. This final-form rulemaking consolidates the provisions regarding late filing of claims and applications in new § 65.43a. This new section contains provisions similar to the regulations it replaces. It also reflects circumstances that may prevent a claimant from filing a timely application or claim under current procedures in which applications and claims are taken by telephone, Internet and fax transmission.

Section 65.56 (relating to withdrawing an application for benefits) specifies circumstances under which the Department may approve a claimant's request to withdraw an application for benefits and cancel the corresponding benefit year.

Under section 4(u) of the law (43 P.S. § 753(u)), a claimant may be "unemployed" for purposes of eligibility for UC if he is working "less than his full-time work." Neither the law nor the existing regulations define "full-time work" for purposes of section 4(u) of the law. As a result, this provision has been applied inconsistently. New § 65.73 (relating to full-time work) specifies how a claimant's full-time work is determined.

C. Comments

Notice of proposed rulemaking was published at 40 Pa.B. 2643 (May 22, 2010). The Department received comments from Community Legal Services (CLS) and the Independent Regulatory Review Commission (IRRC). The Senate Labor and Industry Committee and the House Labor Relations Committee did not comment.

§ 65.41. *Filing methods*

Comment: Subsection (a) allows a claimant to file an application for benefits by phoning a UC Service Center, by completing an online application at the Department's

web site or by mailing or faxing a hard copy application to the Department. These filing methods are consistent with current procedure. CLS commented that § 65.41 also should permit claimants to file applications for UC benefits person to person at CareerLink® offices.

Response: CLS' suggestion would require the presence of UC personnel at CareerLink®. However, the Department does not currently staff the CareerLink® offices with UC personnel and adding UC personnel to CareerLink® offices would be cost prohibitive. Also, if a claimant wants to complete the UC application by speaking to a UC staff person, that can be done by phoning a UC Service Center. Stationing UC personnel at CareerLink® offices to take applications by interview would duplicate an existing service. Moreover, filing an application in a CareerLink® office would not be a viable option for claimants who do not reside in close proximity to one of the current CareerLink® locations.

Comment: Subsection (b) allows a claimant to file a claim for compensation by telephoning a UC office, through the Department's telephone claim system or by completing an online claim at the Department's web site. These filing methods are consistent with current procedure. CLS commented that subsection (b) also should allow claims to be filed by mail to accommodate claimants who do not speak English or Spanish.

Response: Currently, the Internet and telephone claims systems are available in both English and Spanish. Permitting claims to be filed by mail is not necessary to enable individuals who speak other languages to file claims. A procedure is currently in place to assist claimants who do not speak English or Spanish. These individuals may call the UC Service Center to file claims and receive over-the-phone interpretation assistance from Language Line Services. Language Line Services provides an interpreter who speaks the claimant's language to assist the UC Service Center representative to take claim information from the claimant. Language Line Services provides interpretation services for 170 languages. Also, it is unclear how filing claims by mail would be an effective accommodation for persons who do not speak English, because a paper claim form, to be completed and returned by mail, would be printed in English.

Comment: Subsection (a) allows a claimant to file an application for benefits by phone, online or by mailing or faxing a hard copy application to the Department. Subsection (b) also allows a claimant to file a claim for compensation by telephone or online, but does not provide that claims may be mailed or faxed to the Department. IRRC questions why filing by mail or fax are not included in the permissible means to file claims for compensation in subsection (b).

Response: The Department has an established infrastructure and existing procedures to accept claims that are filed by telephone (both claims filed by phoning the UC Service Center and claims filed through the telephone claim system) and online. To accept claims by mail and fax routinely, the Department would have to create new procedures, hire additional personnel and incur additional costs. Claims filed by telephone and the Internet reach the Department immediately, in contrast to claims filed by first class mail which, according to the United States Postal Service estimated delivery time, would take 2 to 3 days to arrive. Claims filed by telephone and through the Internet are processed electronically, whereas paper claims filed by mail or fax would require manual processing, which increases the processing time. Although applications for benefits filed by mail and fax, which the

regulation will allow, present issues similar to the issues associated with claims filed by those methods, the deficiencies associated with applications filed by mail and fax are not as problematic. Applications for benefits are not as time-sensitive as claims for compensation. Moreover, an application for benefits is filed only once for each benefit year, but claims are filed biweekly throughout the time a claimant is receiving benefits.

Comment: Subsection (d) would allow the Department to prescribe additional methods to file applications for benefits and claims for compensation and require the Department to designate the date on which an application or claim is filed using the additional method established by the Department. Subsection (e) would allow the Department to suspend use of one or more filing methods under certain circumstances. CLS and IRRC commented that changing filing methods and designating when a claim is filed should be done through the rulemaking process.

Response: The Department deleted subsections (d) and (e) from the final-form regulation.

§ 65.43a. *Extended filing*

Comment: Under the existing regulations, a claim for compensation for a week when the claimant worked part-time shall be filed within 4 weeks after the employer paid wages for that week. Under subsection (a), a claim for a week when the claimant worked part-time shall be filed “not later than the last day of the second week after the employer paid wages for that week.” CLS commented that it preferred the longer filing period under existing regulations and that the drafting of the new provision is difficult to read.

Response: When the existing 4-week filing period was established, claimants were required to report to local Department offices personally to file claims. This may have presented difficulties for claimants working part-time. Claimants are now able to file claims by phone or the Internet. Because in-person filing is no longer required, a 4-week period to file a claim for a week of part-time work is not necessary. A 2-week period is sufficient.

Comment: Subsections (c) and (d) allow extended time periods for filing applications and claims. Subsection (e) lists the reasons that permit extended filing and indicates the duration of the extension for each reason. Under subsection (e), if a claimant attempts to file by telephone, Internet or fax on the last day that filing is otherwise allowed and the method used to attempt to file is unavailable or malfunctions, a 2-week extension to file is granted. CLS does not agree that extended filing should be granted only if the unsuccessful attempt to file occurred on the last day and asked about a claimant who attempted to file prior to the last day. CLS also asked how the Department will determine that a claimant made an unsuccessful attempt to file.

Response: Claimants have a responsibility to file applications for benefits and claims for compensation during the established time periods. If a claimant attempts to file prior to the last day and is unable to do so due to a technological malfunction, the claimant should make an additional attempt to file before the filing period expires. If, for example, a claimant attempts without success to file on Sunday and the filing deadline is the following Saturday, it would be unreasonable and unnecessary to immediately grant a 2-week extension of the filing deadline without regard to further efforts by the claimant to

file timely. If the claimant makes an unsuccessful attempt to file on the last day, however, this regulation will grant an extension.

The Department is aware when its telephone and Internet systems are “down.” Also, the Department will obtain information from the claimant regarding the dates and circumstances of unsuccessful attempts to file an application or claim.

Comment: CLS commented that the list of reasons for extended filing in subsection (e) should include “inability to get through to the UC Service Centers because of high call volume or technological problems, and claimant difficulties in using the telephone claims system (also known as the “PAT” system)”.

Response: An inability to successfully phone a UC Service Center due to technological problems would be covered by the extension in subsection (e) for situations when the claimant attempted to file by telephone, Internet or fax on the last day and the method used by the claimant was unavailable or malfunctioned. It is unclear what CLS means when it refers to “claimant difficulties” using the telephone claims system. To the extent that CLS is referring to malfunctioning or unavailability of the telephone system that would also be covered by the aforementioned extension. To the extent that CLS is referring to other difficulties, the 2-week extension in subsection (e) for “other” reasons, “if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant,” may apply, depending on the circumstances. In the final-form regulation, the Department added a reference to high call volume to the first reason for an extension listed in subsection (e), as CLS suggested.

Comment: CLS commented that language barriers should be added to the list of reasons for extended filing in subsection (e) and the corresponding extension should be more than 2 weeks. IRRC referenced the following reason in subsection (e): “other, if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant.” IRRC commented that it is unclear whether a limited English proficiency (LEP) individual could be granted an extension of the time to file under this provision and stated that the Department should consider addressing LEP in the final-form regulation.

Response: Allowing LEP individuals additional time to file applications for benefits and claims for compensation would not be an effective means to facilitate their participation in the UC program. If a claimant is unable to communicate verbally in English, giving the claimant additional time to speak to a UC Service Center representative to file an application or claim does not address the claimant’s language barrier. Similarly, if a claimant is unable to communicate in writing in English, allowing the claimant additional time to submit a written application or claim (by mail, fax or the Internet) is not a solution. Rather, enhancing filing methods to bridge language barriers, which the Department has done, is a more effective remedy. The Internet application for benefits and claim for compensation, as well as the telephone claims system, are available in both English and Spanish. Individuals who speak other languages, as well as individuals who speak Spanish, may call the UC Service Center and receive over-the-phone interpretation assistance from Language Line Services. Language Line Services provides an interpreter who speaks the claimant’s language to assist the UC Service Center representative

to take information from the claimant. Language Line Services provides interpretation services for 170 languages.

Moreover, adding LEP as an explicit reason for extended filing is not necessary. If an individual is unable to file a timely application or claim for an LEP related reason, the claimant could be granted extended filing under the provision cited by IRRC, if the claimant's facts and circumstances satisfy the requirements of that provision.

Comment: Under subsection (f), if a claimant is unable to file a timely claim due to illness or injury the time for filing the claim is extended until the end of the second week after the incapacity ends. CLS suggested that this reason for extended filing should be added to the list of reasons for extended filing in subsection (e) because otherwise this reason could be viewed as inconsistent with the provision in subsection (e) that grants only two weeks of extended filing for "other" reasons.

Response: Each reason for extended filing in subsection (e) expands the filing period for a fixed number of weeks. Illness or injury allows an extension of the filing time for an indefinite period, that is, until 2 weeks after the incapacity ends. Also, subsection (e) applies to applications and claims, whereas subsection (f) applies only to claims. These are reasons why the extension for illness or injury is contained in a separate subsection. The fact that the extension for "other" reasons and the extension for illness or injury might both apply in a given set of circumstances is not problematic. Subsection (h) states that if two or more reasons for extended filing apply, the claimant is given the longest extension.

§ 65.56. *Withdrawing an application for benefits*

Comment: CLS stated that this section is confusing and it does not understand what this section means. It also mentions that there are disagreements over the characterization of overpayments as fault or nonfault and that there are differing recoupment rules depending on the characterization.

Response: This section lists four requirements that shall be satisfied for a claimant to withdraw an application for benefits and cancel the corresponding benefit year. It also indicates when a request takes effect and provides the criteria to disapprove a request.

The regulation does not distinguish between fault and nonfault overpayments. The provisions concerning recoupment of an overpayment apply whether the overpayment is classified as fault or nonfault. Moreover, the regulation contains provisions that prevent an overpayment from arising as a result of withdrawing an application. If a claimant were allowed to withdraw an application after having received benefits, an overpayment would occur. Therefore, the regulation provides that any benefits paid to the claimant on an application shall be repaid to withdraw the application. Similarly, if benefits otherwise payable to the claimant on the application are applied to a previous overpayment, the prereduction balance of the overpayment must be restored to withdraw the application.

Comment: CLS asked what would happen if a claimant stopped claiming benefits on an application instead of withdrawing the application.

Response: If a claimant simply ceases to claim benefits on an application the corresponding benefit year remains in effect. The claimant would not be able to file a new application for benefits in this Commonwealth until the

benefit year ends. Assuming the claimant had not received all the benefits for which he is financially eligible on the application, the claimant would not be able to file an application for benefits in another jurisdiction until the benefit year ends. However, if a claimant withdraws a current application for benefits and cancels the current benefit year, the claimant would be able to file a new application for benefits immediately. This may be advantageous to the claimant. For example, a claimant might file an application for benefits but return to work without claiming compensation. If the claimant is laid off again within the benefit year, the claimant may wish to withdraw the existing application to file a new application and take advantage of higher wages in a more recent base year.

§ 65.73. *Full-time work*

Comment: A claimant shall be unemployed to be eligible for benefits. Under section 4(u) of the law, a claimant is "unemployed" during a week if the claimant does not work that week or if the claimant works "less than his full-time work" and remuneration does not exceed a certain amount. This regulation defines the term "full-time work" for purposes of section 4(u) of the law. Subject to certain exceptions, the general rule under the regulation is that "[t]he number of hours the claimant worked in the base year for all employers is divided by the number of weeks in the base year in which the claimant worked to determine the claimant's full-time work." Subsection (a)(2) and (3) supplies rules to be followed when making this calculation. Subsection (a)(2) would exclude from this calculation "the number of hours that a claimant worked during a week . . . for an employer in excess of the customary number of hours the claimant worked per week for that employer. . . ." Subsection (a)(3) provides that "if a claimant's normal work schedule . . . consisted of multiple week cycles, and the cycle normally included one or more weeks during which the claimant did not work, all weeks in the cycle are deemed weeks in which the claimant worked."

CLS commented that subsection (a)(2) and (3) disadvantages the claimant. CLS and IRRC would like to know the rationale for these paragraphs and how they will be implemented.

Response: "Full time" is not defined in the law. Under 1 Pa.C.S. § 1903(a) (relating to words and phrases), words and phrases in a statute should be construed according to their common and approved usage. The dictionary defines the term as "the amount of time considered the normal or standard amount for working during a given period." *Webster's Ninth New Collegiate Dictionary*, 497 (1990). For the purpose of relief from benefit charges, "part-time work" is defined in § 63.35(a) (relating to requests as to part-time workers) as "[w]ork other than normal full-time work of a claimant with a regular base year employer which is ordinarily performed for less than the total number of hours or days customarily worked in the business, occupation or industry." The Commonwealth Court has used this regulation to construe the meaning of "full-time work." See *Baldwin-Whitehall School District v. Unemployment Compensation Board of Review*, 848 A.2d 1081 (Pa. Cmwlth. 2004); see also *Watkins v. Unemployment Compensation Board of Review*, 491 A.2d 935 (Pa. Cmwlth. 1985). Under 1 Pa.C.S. § 1903(a) and Commonwealth Court's guidance, the Department construes the term "full-time" to mean the hours customarily worked.

As the total number of hours worked in the base year increases, so does the number of hours that constitute the claimant's weekly full-time work and, correspondingly, the

number of hours the claimant may work and remain potentially eligible for benefits. Allowing hours in excess of those customarily worked to determine “full-time work” could result in an individual being considered unemployed and eligible for benefits even though he is working the hours he customarily works. It would not be a case of “economic insecurity due to unemployment,” the amelioration of which is the purpose of the law, if an individual is working customary hours. See section 3 of the law (43 P. S. § 752).

In addition, allowing hours in excess of those customarily worked to be used in the calculation of “full-time work” could result in the anomaly that an individual who worked more than customary hours could receive unemployment benefits, while an individual similarly situated who only worked customary hours might not receive benefits. It is presumed that the intention of the General Assembly was not to interpret the law to achieve an unreasonable result. See 1 Pa.C.S. § 1922(1) (relating to presumptions in ascertaining legislative intent).

Subsection (a)(3) addresses the situation when an individual’s normal work schedule in the base year consists of multiple week cycles and the cycle normally includes 1 or more weeks when the claimant does not work. The regulation would include the normal nonwork weeks in the number of weeks of work in the base year for purposes of calculating the claimant’s “full-time work.” This will prevent the calculation from producing an artificially inflated number of hours as the claimant’s full-time work. Subsection (a)(3) is consistent with *Corning Glass v. Unemployment Compensation Board of Review*, 616 A.2d 175 (Pa. Cmwlth. 1992). In that case, the claimants worked a rotating schedule of 7 days work followed by 2 to 4 days off. This schedule provided an average of 42 hours of work per week and a minimum of 40 hours per week. The employer changed the rotating schedule to 4 days work followed by 48 hours off. This schedule also resulted in an average of 42 hours per week, but some weeks the claimants only worked 32 hours. The claimants sought benefits for the 32 hour weeks. When determining if the claimants had worked less than full-time for the weeks for which claims were filed, the Commonwealth Court looked at the claimants’ overall work schedule in relation to the prior overall schedule, rather than looking at the particular weeks in question individually.

The Department will implement subsection (a)(2) and (3) by obtaining information from the claimant and the claimant’s employer regarding the number of hours and weeks worked, hours customarily worked and the claimant’s work schedule.

D. *Affected Persons*

The proposed rulemaking will affect all persons claiming UC benefits. Approximately 617,000 new applications for benefits are filed each year.

E. *Fiscal Impact*

Commonwealth and the regulated community

The majority of this final-form rulemaking concerns procedural matters, such as the methods and time for filing UC applications and claims. Although the final-form rulemaking contains procedural requirements, these do not affect the amount or duration of benefits available to the claimant under the law. Also, some of the procedural provisions of this final-form rulemaking codify current practice. For these reasons the new and amended regulations addressing procedures would not involve any fiscal impact to the UC Fund or the regulated community. Only

a small portion of this final-form rulemaking involves substantive matters. Either these provisions reflect the current application of the law in which event there would be no fiscal impact or the Department is unable to estimate the amount of any fiscal impact that may occur.

Political subdivisions

This final-form rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the law.

General public

This final-form rulemaking does not affect the general public.

F. *Paperwork Requirement*

This final-form rulemaking will not impose additional paperwork requirements on the regulated community.

G. *Sunset Date*

The regulations will be monitored through practice and application. Therefore, a sunset date is not designated.

H. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The following regulations, as promulgated, amended or rescinded by this final-form rulemaking, apply to weeks of unemployment ending on or after February 12, 2011: §§ 65.11, 65.12, 65.13, 65.14, 65.15, 65.32, 65.33, 65.43, 65.43.1(a), 65.43.1(b), 65.43.1(d), 65.43.1(f), 65.43.1(i) and 65.73. The following regulations, as amended or rescinded by this final-form rulemaking, apply to claims for compensation filed on or after February 12, 2011: §§ 65.31 and 65.41. The following regulations, promulgated or as amended by this final-form rulemaking, apply to applications for benefits filed on or after February 12, 2011: §§ 65.41, 65.42, 65.43a(c), 65.43a(g), 65.43a(i) and 65.56. Amended § 65.22 applies to an offer of work made on or after February 12, 2011. Amended § 65.102 applies to weeks of unemployment ending on or after December 16, 2005. Section 65.56 applies to a request made on or after February 12, 2011, to withdraw an application for benefits.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 7, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 2643, to IRRC and the Chairpersons of the Senate Labor and Industry Committee and the House Labor Relations Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 15, 2010, 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 December 16, 2010, and approved the final-form rulemaking.

J. Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 2643.

(4) This final-form rulemaking is necessary and suitable for the administration of the law.

K. Order

The Department, acting under the authority of the law, orders that:

(1) The regulations of the Department, 34 Pa. Code Chapter 65, are amended by amending §§ 65.11, 65.14, 65.22, 65.42, 65.43, 65.63, 65.102 and 65.156, by deleting §§ 65.1, 65.12, 65.13, 65.15, 65.21, 65.31—65.33, 65.35, 65.44 and 65.117 and by adding §§ 65.56, 65.73 and 65.139 to read as set forth at 40 Pa.B. 2643; and by amending § 65.41 and adding § 65.43a to read as set forth in Annex A.

(2) The Secretary of the Department shall submit this order, 40 Pa.B. 2643 and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(3) The Secretary of the Department shall certify this order, 40 Pa.B. 2643 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The following regulations, as promulgated, amended or rescinded by this final-form rulemaking, apply to weeks of unemployment ending on or after February 12, 2011: §§ 65.11, 65.12, 65.13, 65.14, 65.15, 65.32, 65.33, 65.43, 65.43.1(a), 65.43.1(b), 65.43.1(d), 65.43.1(f), 65.43.1(i) and 65.73. The following regulations, as amended or rescinded by this final-form rulemaking, apply to claims for compensation filed on or after February 12, 2011: §§ 65.31 and 65.41. The following regulations, promulgated or as amended by this final-form rulemaking, apply to applications for benefits filed on or after February 12, 2011: §§ 65.41, 65.42, 65.43a(c), 65.43a(g), 65.43a(i) and 65.56. Amended § 65.22 applies to an offer of work made on or after February 12, 2011. Amended § 65.102 applies to weeks of unemployment ending on or after December 16, 2005. Section 65.56 applies to a request made on or after February 12, 2011, to withdraw an application for benefits.

SANDI VITO,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 12-74 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 34. LABOR AND INDUSTRY
PART II. BUREAU OF EMPLOYMENT SECURITY
Subpart A. UNEMPLOYMENT COMPENSATION
CHAPTER 65. EMPLOYEE PROVISIONS
Subchapter C. APPLICATION PROCEDURE
APPLICATION FOR BENEFITS AND CLAIMS FOR COMPENSATION

§ 65.41. Filing methods.

(a) An application for benefits shall be filed by one of the following methods:

(1) Telephoning a UC Office and providing the information required by the Department representative.

(2) Completing the Department's Internet application and electronically transmitting it to the Department.

(3) Completing the Department's application form and sending the form to a UC Office by United States Mail or transmitting the form to a UC Office by facsimile machine.

(b) A claim for compensation shall be filed by one of the following methods:

(1) Telephoning a UC Office and providing the information required by the Department representative.

(2) Telephoning the Department's telephone claim system and providing all information required by the system.

(3) Completing the Department's Internet claim and electronically transmitting it to the Department.

(c) The filing date of an application for benefits or a claim for compensation is:

(1) For applications and claims filed by telephone, the date when the telephone call occurs if the claimant provides the information required by the Department representative or the Department's telephone claim system.

(2) For applications and claims filed by the Internet, the date indicated on the confirmation page displayed upon completion of the filing process.

(3) For applications and claims filed by United States Mail:

(i) The date of the official United States Postal Service postmark on the envelope, a United States Postal Service Form 3817 (Certificate of Mailing) or a United States Postal Service certified mail receipt.

(ii) If there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt, the date of a postage meter mark on the envelope.

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the date recorded by the UC Office when it receives the application or claim.

(4) For applications filed by facsimile machine:

(i) The date of receipt imprinted by the UC Office fax machine.

(ii) If the UC Office fax machine does not imprint a legible date, the date of transmission imprinted by the sender's fax machine.

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the date recorded by the UC Office when it receives the application.

§ 65.43a. Extended filing.

(a) For a week in which a claimant was employed less than his full time work, the claimant shall file a claim for compensation not later than the last day of the second week after the employer paid wages for that week. If the earliest week for which a claim for compensation is filed in accordance with this subsection precedes the week in which the claimant's application for benefits is filed or deemed filed, as determined without regard to this subsection, the Department will deem the application to be filed during the earliest week for which a claim is filed.

(b) If a determination regarding the eligibility of claimants under section 402(d) of the law (43 P. S. § 802(d)) is issued, similarly situated claimants shall file claims for compensation for weeks during the work stoppage not later than the last day of the 6th week after the determination becomes final. If the earliest week for which a claim for compensation is filed in accordance with this subsection precedes the week in which the claimant's application for benefits is filed or deemed filed, as determined without regard to this subsection, the Department will deem the application to be filed during the earliest week for which a claim is filed.

(c) The Department will deem an application for benefits to be filed prior to the week in which it actually is filed if the claimant did not file the application earlier for a reason listed in subsection (e). The Department will deem the application to be filed during the week that precedes the week of actual filing by the number of weeks indicated in subsection (e).

(d) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 (relating to claims for compensation—when to file), for a reason listed in subsection (e), the time for filing the claim is extended for the number of weeks indicated in subsection (e).

(e) For purposes of subsections (c) and (d) the number of weeks is determined as follows:

<i>Reason</i>	<i>Number of weeks</i>
The Department suspends accepting filings or is unable to handle all filings, due to an excessive volume of telephone calls or other reasons.	6

<i>Reason</i>	<i>Number of weeks</i>
The claimant attempts to file by telephone, Internet or fax transmission in accordance with § 65.41 (relating to filing methods), the method used to attempt to file is unavailable or malfunctions, and the attempt to file occurs on the last day that the claimant could timely file by the method used	2
A UC Office fails to accept a filing as a result of error or mistake by the Department.	52
Sickness or death of a member of the claimant's immediate family or an act of God.	2
Other, if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant.	2

(f) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 due to the claimant's illness or injury, the time for filing the claim is extended until the last day of the second week after the incapacity ends.

(g) The Department will deem an application for benefits to be filed no more than 2 weeks prior to the week in which it actually is filed if the claimant did not file the application earlier because an employer erroneously advised the claimant that the claimant would be recalled to work within 1 week.

(h) If two or more of the reasons enumerated in subsections (e) and (f) have prevented a claimant from filing a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43, the longest extension applies. If adherence to the longest extension would be inequitable to the claimant, the sum of the applicable extensions applies.

(i) Notwithstanding any provision of this section, the Department may not extend the time for filing a claim for compensation more than 52 weeks and may not deem an application for benefits to be filed in a week included in a previous benefit year.

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