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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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Original: 2038

August 7, 2000

FILE COPY

Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

Re: Final Form Regulations #12-54
WC Health & Safety

RECEIVED
2000 AUG - 7 PM 2: 08
REGULATORY REVIEW COMMISSION

Dear Mr. Nyce:

I wish to comment on the Department of Labor and Industry's final form regulations for the application of health and safety provisions of the Workers' Compensation Act. While I opposed passage of Act 44 and Act 57, I enthusiastically support the health and safety provisions that require insurers to maintain or provide accident and illness prevention service to policyholders.

Unquestionably, the Department of Labor and Industry spent a considerable amount of time on the regulations to address many concerns. However, I found three areas of concern, which I will outline below, in a review of the final form regulations that were provided to my office. Additionally, I have received written comments from the PA AFL-CIO outlining a number of concerns with the final form regulations. It is my understanding that those comments have already been received by IRRC.

I would respectfully request that, if possible, consideration of the final form regulations be postponed until a later meeting of the Commission so that adequate time is provided for IRRC and the Department to review and address all comments received.

I appreciate the opportunity to make the following comments with respect to these proposed regulations.

- Section 1001(c) of the Workers' Compensation Act empowers the Department with authority to "conduct inspections" of insurers, to determine the adequacy of required accident

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prevention services. However, the Department has replaced the term "inspections" with the term "audits" throughout the proposed regulations. The definition of "audits" under the final form regulations appears to merely relate to a review of written records and documentation as opposed to on-site inspections. I believe the definition of "audit" unnecessarily restricts the ability of the Department to also conduct on-site inspections of prevention service programs in work situations. For example, the audit site is identified as the subject's main office or the Department's headquarters. I believe the definition of "audits" misinterprets the statutory language, which clearly provides for inspections. That definition also introduces needless ambiguity into the regulations and may serve to inappropriately restrict the power of the Department to conduct the full and comprehensive inspections mandated by the Legislature.

- The Department has gone beyond its statutory authority by carving out an exception to the penalties mandated by Act 44 for violation of the health and safety provisions. Section 1001 (f) of the act mandates that failure to maintain or provide required accident prevention services shall constitute a continuing civil violation subject to a maximum fine of \$2,000 per day. However, the proposed regulations improperly introduce into the law a 60-day waiver period to commence after the Department determines that an insurer or self-insurer has failed to maintain or provide the required accident prevention services. During this waiver period, the offender is allowed a full two months to correct the violation, during which time the fines mandated by the General Assembly are waived. There is no provision in the Workers' Compensation Act for this waiver of the required penalty for violations. The Department does not remedy this overreach by characterizing a violation after an inspection or "audit" as merely an "initial determination." There is clearly no provision in the statutory language for such an "initial determination." A violation of the Act is subject to the mandated fines, without the waiver attempted to be introduced into the law by the Department.
- The Department should not encourage the formation of unbalanced workplace safety committees. Pursuant to Section 1002(a) of the law, the Department has the authority to certify safety committees and to develop such certification criteria. However, Section 129.1004 of the proposed regulations specifies that unbalanced, employer-controlled safety committees will be certified if one employee representative agrees. This action encourages formation of workplace safety committees that are composed primarily of employer representatives. Safety issues will not be fully and adequately addressed without balanced representation of employers and employees on safety committees. The problem will be exacerbated in non-union workplaces where employers can bring pressure to bear on their employees to agree to a safety committee that is top-heavy with employer representatives. The Department should specify that all workplace safety committees consist of an equal number of employer and employee representatives.

I hope the Commission will seriously consider my concerns. To reiterate, a delay in the Commission's consideration of these final form regulations would allow both IRRC and the Department to carefully review all comments.

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I appreciate the opportunity to comment. Please contact my office if should you have any questions.

Sincerely yours,



Robert E. Belfanti, Jr.
Minority Chair
House Labor Relations Committee

cc: Johnny J. Butler, Secretary, Labor & Industry
Richard Thompson, Director, Bureau of Workers' Compensation
John R. McGinley, Jr., Chairman, IRRC
Alvin C. Bush, Vice Chairman, IRRC
Arthur Coccodrilli, Member, IRRC
Robert J. Harbison, III, Member, IRRC
John F. Mizner, Member, IRRC
Len E. Negley, Chief, Bureau of Workers' Compensation
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Representative Joseph M. Gladeck, Jr.
Sheilah A. Borne, Legislative Affairs, Labor and Industry
William George, PA AFL-CIO President
David Wilderman, PA AFL-CIO Legislative Director