COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993 (ACT NO 130 OF 1993)

REGULATIONS ON IRRITANT-INDUCED ASTHMA FOR THE COMPENSATION FUND MADE UNDER COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993

The Minister of Employment and Labour, after consultation with the Compensation Board, has made the regulations under section 97 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993) in Schedule A. These regulations are published for public comments only.

Interested and affected parties are hereby invited to submit written representations on the proposed Regulations. The aforesaid representations must be marked for the attention of **Mr TH Maphologela** and sent by registered post or emailed or hand delivered within 60 days of publication of this notice to the following addresses:

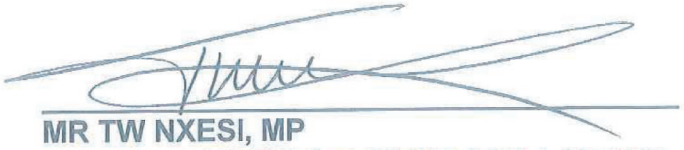
Compensation Fund
167 Thabo Sehume Street
Pretoria
0157

OR

PO Box 955
Pretoria
0001

Email addresses: Kimbly.Makgoba@labour.gov.za or Harry.Maphologela@labour.gov.za

Copies of the Regulations are herewith attached.



MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 26/03/2020

SCHEDULE A

REGULATIONS ON IRRITANT-INDUCED ASTHMA FOR THE COMPENSATION FUND MADE UNDER THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993

ARRANGEMENT OF REGULATIONS

Pages

1. Definitions

"Bronchodilators" means drugs that cause widening of the bronchi, for example any of those drugs taken by inhalation for the alleviation of asthma;

"Bronchial challenge test" means a lung function test for asthma, which is more commonly used in adults than in children, and which might be performed if symptoms and screening spirometry do not clearly or convincingly establish a diagnosis of asthma and entails that you inhale increasing amounts of methacholine aerosol mist before and after spirometry. The methacholine test is considered positive, meaning asthma is present, if the lung function drops by at least 20%;

"FVC" means forced vital capacity and consists of the total volume of air that can be exhaled during a maximal forced effort;

"FEV1/FVC ratio" means the percentage of the FVC expired in one second;

"FEV1" means forced expiratory volume in one second and entails the volume of air exhaled in the first second under force after a maximal inhalation, the normal values of which are between 80% and120%;

"Irritant-induced Asthma" means a disease characterised by variable airflow limitation and/or bronchial hyper responsiveness due to causes and conditions attributable to a particular working environment. These Regulations deal with non-immunological, namely Irritant-induced Asthma, resulting from a single intense exposure or multiple exposures to known irritant(s) in a previously healthy individual;

"IgE" means immunoglobulin E (IgE) test, which measures the level of IgE, a type of antibody;

"PEF" or **"PEFR"** means Peak expiratory flow (PEF), also called peak expiratory flow rate (PEFR), and is a person's maximum speed of expiration, as measured with a peak flow meter, a small, hand-held device used to monitor a person's ability to breathe out air;

"the Act" means the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

"Regulations" means the regulations relating to irritant-induced asthma made under the Compensation for Occupational Injuries and Diseases Act, 1993; and

"workplace exposure" means exposure or likely exposure to a hazardous substance whilst at work.

2. Diagnosis

(1) A diagnosis of Irritant-induced Asthma shall be made by a medical practitioner based on the following:

(a) a lung function test;
(b) occupational exposure to a known cause of asthma;
(c) a chronological relationship between asthma and the working environment;

Note: If possible, the evidence for the diagnosis of asthma should be documented before commencing treatment.

(d) a characteristic history and physical examinations that suggests asthma;

(e) physiological evidence of variable airflow limitation including any one or more of the following:

(i) Significant reversibility of FEV_1 post-bronchodilator (>12% and >200ml);
(ii) excessive variability in twice-daily PEF (>10%) over 2 weeks. Daily PEF variability can be calculated as [(day's highest PEF – day's lowest PEF)/ mean of day's highest and day's lowest PEF]. This variability is summed and averaged over 2 weeks;
(iii) significant increase in FEV_1 (>12% and >200ml) after weeks of oral steroid anti-inflammatory treatment; and
(iv) positive non-specific bronchial hyper responsiveness (methacholine or histamine challenge test);

(f) exclusion of other pulmonary disorders that may explain the symptoms or simulate asthma, such as vocal cord dysfunction, hyperventilation syndrome, multiple chemical sensitivity syndrome or COPD;

(g) an occupational exposure preceding the onset of asthmatic symptoms;

(h) an exposure and/or physiological evidence of the relationship between asthma and the workplace environment (Diagnosis of Irritant-induced Asthma requires 1 and preferably one or more of (i)-(v)):

(i) workplace exposure to an irritant agent present as a gas, smoke, fume, vapour or dust. The exposure could be single acute high-level exposure causing acute asthma symptoms within 24 hours, or chronic with low-level exposure causing late onset asthma symptoms;

(ii) an association between symptoms of asthma and work exposure;

(iii) significant work-related variability (≥20%) in serial PEFR;

(iv) work-related changes in serial testing of non-specific bronchial hyperresponsiveness (e.g. methacholine or histamine challenge test); and

(v) positive specific inhalation challenges in the laboratory or workplace challenges.

(2) Confirmatory diagnosis of irritant-induced asthma can only be determined on lung function tests performed three weeks after removal from exposure.

(3) The medical practitioners employed by the Compensation Fund shall determine whether the diagnosis of Irritant-induced Asthma was made according to acceptable medical standards.

3. Impairment

(1) Assessment of permanent impairment shall be determined no later than two years after diagnosis and removal from the exposure or reduction in the exposure , and after maximum medical improvement has been achieved.

(2) The degree of impairment will be evaluated based on lung function tests and the history of medication prescribed to control asthma. Original copies of lung function tests must be submitted to enable the medical practitioners to consider acceptability of the quality of these tests.

(3) A test carried out after the administration of a Bronchodilator must be included.

(4) The impairment class will be determined by the two parameters (post bronchodilator FEV1 and medication requirements), each contributing to the compilation of a class, which determines the permanent disablement of a claimant (whole person impairment).

(5) The evaluation of airflow obstruction will be based on lung function testing in accordance with the Commissioner's Regulation on Irritant-induced asthma.

Table 1: Parameter 1: Postbronchodilator FEV1	
Class	FEV1 % Predicted
0	≥80
1	70 – 79
2	60-69
3	50 – 59
4	< 50

* FEV_1 % predicted = measured FEV_1 divided by reference FEV_1 x 100

Table 2: Parameter 2: Minimum Medication Prescribed	
CLASS	Medication
0	No medication.
1	Occasional bronchodilator, not daily. **OR** Occasional or daily short acting bronchodilators + daily low-dose inhaled steroid (≤ 400 micrograms Budesonide or equivalent*).
2	Occasional or daily short acting bronchodilators + daily low dose inhaled steroid (≤400 micrograms Budesonide or equivalent) in addition to any one of the following: – Daily long acting bronchodilator; – Leukotriene modifier; – Sustained-release theophylline; or – Occasional (1-3/year) course oral steroid. **OR** Occasional or daily short acting bronchodilators + daily medium dose inhaled steroid (400-800 micrograms of Budesonide or equivalent).

3	Daily short acting bronchodilator + daily medium dose inhaled steroid (400-800 micrograms of Budesonide or equivalent) in addition to any one of the following: – Daily long acting bronchodilator; – Leukotriene modifiers; – Sustained-release theophylline; or – Occasional (1-3/year) course oral steroid
4	Daily short acting bronchodilator + daily medium dose inhaled steroid (400-800 micrograms of Budesonide or equivalent) in addition to any one of the following: – Daily long acting muscarinic antagonist (5 micrograms of Tiotropium or equivalent); or – Frequent (>3/year) course oral steroid in addition to any other asthma medication.

* 200 ug Budesonide is equivalent to 250 ug Beclomethasone dipropionate, 100 ug Fluticasone propionate and 80 ug Ciclesonide.

Criteria for rating permanent impairment due to asthma

Class	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
Whole person impairment rating (%)	0	2%-10%	11%-23%	24%-40%	45%-65%
Severity Grade (%)		2 4 6 8 10 (A B C D E) (minimal)	11 14 17 20 23 (A B C D E) (MILD)	24 28 32 36 40 (A B C D E) (Moderate)	45 50 55 60 65 (A B C D E) (Severe)
Clinical parameters (minimum medication needed, frequency of attacks etc.)	No medication required	Occasional bronchodilator, not daily. OR Occasional or daily short acting bronchodilators + daily low-dose inhaled steroid (≤ 400 micrograms Budesonide or equivalent*).	Occasional or daily short acting bronchodilators + daily low dose inhaled steroid (≤400 micrograms Budesonide or equivalent) in addition to any one of the following: – Daily long acting bronchodilator, or – Leukotriene modifier, or – Sustained-release theophylline, or – Occasional (1-3/year) course oral steroid. OR Occasional or daily short acting bronchodilators + daily medium dose inhaled steroid (400-800 micrograms of Budesonide or equivalent).	Daily short acting bronchodilator +daily medium dose inhaled steroid (400-800 micrograms of Budesonide or equivalent) in addition to any one of the following: – Daily long acting bronchodilator, or – Leukotriene modifiers, or – Sustained-release theophylline, or – Occasional (1-3/year) course oral steroid	Asthma not controlled by treatment: Daily short acting bronchodilator + daily medium dose inhaled steroid (400-800 micrograms of Budesonide or equivalent) in addition to any one of the following: – Daily long acting muscarinic antagonist (5 micrograms of Tiotropium or equivalent), or Frequent (>3/year) course oral steroid in addition to any other asthma medication.
Maximum postbronchodilater FEV1, percentage predicted	≥80%	70%-80%	60%-69%	50%-59%	<50%
Objective tests for degree of airway hyperesponsiveness PC20 mg/mL	6-8	3-5	3->0.5	0.5-0.25	0.24-0.125

4. Compensation Benefits

(1) Payment for temporary disablement shall be made for as long as such disablement continues, but not for a period exceeding 24 months.

(2) In the case of permanent disablement less than or equal to 30%, a lump sum shall be paid in terms of the Act and removal from further exposure shall be recommended.

Note: Determination of permanent disablement shall be done at least three weeks after removal from exposure.

5. Medical Costs

(1) In all accepted cases of Irritant-induced Asthma, medical aid shall be provided for a period of not more than 24 months from the date of diagnosis or longer if further medical aid will, in the opinion of the Commissioner, reduce the degree of the disablement.
(2) The medical costs for purposes of providing medical aid as contemplated in sub-regulation (1) shall cover diagnosis of Irritant-induced Asthma and any necessary treatment of asthma provided by any health care provider, as well as any costs of chronic medication related to Irritant-induced Asthma treatment.
(3) The Commissioner shall decide on the need for, the nature and sufficiency of medical costs to be supplied.

6. Death Benefits

If the employee dies as a result of irritant-induced asthma death benefits payable shall consist of-

(a) reasonable burial expenses to be paid in terms of the Burial Expenses Policy; and

(b) spouse and dependent's pensions payable, where applicable.

7. Reporting

The following documentation should be submitted to the Compensation Fund or the employer who is individually liable or the licensee concerned:

(a) Employer's Report of an Occupational Disease (W.CL.1);
(b) Notice of an Occupational Disease and Claim for Compensation (W.CL.14);
(c) First Medical Report in respect of an Occupational Disease (W.CL. 22);
(d) For each consultation, a Progress Medical Report (W.CL. 26);
(e) Final Medical Report in respect of an Occupational Disease (W.CL.26) when the employee's condition has reached maximum medical improvement. The most recent lung function tests available, which include pre- and post administration of a bronchodilator, and the medication prescribed should be attached to this report;
(f) Exposure History (W.CL. 110) or an appropriate employment history which may include any information that may be helpful to the Commissioner such as Safety Data Sheets, risk assessments or results of environmental hygiene assessments. The suspected workplace agent should be stated if known;
(g) A medical report on the employee's symptoms that details the history, establishes a diagnosis of COPD and includes results of lung function tests, chest radiographs where appropriate or any other information relevant to the claim; and
(h) An affidavit by the employee (W.CL.305) if an employer cannot be traced or the employer fails to timeously submit Employer's report of an Occupational Disease (W.CL.1).

8. Claims Processing

(1) The Commissioner must consider and adjudicate upon the liability of all claims.

(2) The medical officers employed by the Compensation Fund are responsible for medical assessment of the claim and for the confirmation of the acceptance or rejection of the claim.

MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 26/03/2020

the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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Date: 05 December 2019

Mr Thobile Lamati
Director-General
Department of Employment and Labour (Compensation Fund)
Private Bag X117
Pretoria
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Dear Mr Lamati

Attention: Harry Maphologela

PROPOSED DRAFT REGULATIONS ON IRRITANT-INDUCED ASTHMA FOR THE COMPENSATION FUND MADE BY THE MINISTER UNDER THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993: YOUR E-MAIL DATED 14 OCTOBER 2019

INTRODUCTION

1. The Department of Employment and Labour through its Compensation Fund branch (hereinafter referred to as the "Department") has requested us to scrutinise the proposed draft Regulations on Irritant-induced Asthma for the Compensation Fund (hereinafter referred to as the "draft Regulations") made under section 97 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993) (hereinafter referred to as the "Act").

2. According to the Department, the draft Regulations are technical in nature and therefore our office need not concern itself with the technical aspect of the draft Regulations as the Department's medical personnel has already attended to the technical issues or aspects of the draft Regulations, and are thus satisfied with them.

3. We have thus scrutinised the draft Regulations in order to ensure that the proposed draft Regulations are *intra vires* the provisions of the enabling legislation, and that the said draft Regulations are drafted in the correct drafting form and style. We have made certain comments and indicated suggested amendments on the electronic copy of the draft Regulations, a copy of which is attached hereto.

DELIBERATION

Nature of the Power to make Regulations and its Application

4. The delegation of legislative power to the Executive by Parliament is important and necessary for effective law-making and implementation. In **Executive Council, Western Cape Legislature, and Others v President of the Republic of South Africa and Others** 1995 (4) SA 877 (CC), the Constitutional Court, per Chaskalson P, stated the following with regard to the need for Parliament to delegate its law-making powers :

> "[51] The legislative authority vested in Parliament under s 37(now section 44) of the Constitution is expressed in wide terms - 'to make laws for the Republic in accordance with this Constitution'. In a modern State detailed provisions are often required for the purpose of implementing and regulating laws and Parliament cannot be expected to deal with all such matters itself. **There is nothing in the Constitution which prohibits Parliament from delegating subordinate regulatory authority to other bodies.** The power to do so is necessary for effective law-making. It is implicit in the power to make laws for the country and I have no doubt that under our Constitution Parliament can pass legislation delegating such legislative functions to other bodies. There is, however, a difference between delegating authority to make subordinate legislation **within the framework of a statute under which the delegation is made,** and assigning plenary legislative power to another body...." (Our emphasis.)

5. The power to make rules or regulations is a public power that must be exercised subject to the Constitution of the Republic of South Africa, 1996 (the "Constitution") and the law. In **Affordable Medicines Trust and Others v Minister of Health and Others** 2006 (3) SA 247 (CC), the Constitutional Court stated the following in this regard:

> "[48] Our constitutional democracy is founded on, among other values, the '(s)upremacy of the Constitution and the rule of law'. The very next provision of the Constitution declares that the 'Constitution is the supreme law of the Republic; law or conduct **inconsistent** with it is invalid'. And to give effect to the supremacy of the Constitution, courts 'must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency'. This commitment to the supremacy of the Constitution and the rule of law means that **the exercise of all public power is now subject to constitutional control.**

> [49] The exercise of public power must therefore comply with the Constitution, which is the supreme law, and **the doctrine of legality, which is part of that law.** The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. **It entails that both the Legislature and the Executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'**. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power." (Our emphasis.)

6. Regarding the power to make rules or regulations and to amend them, the Constitutional Court, in the **Affordable Medicines case**, stated the following:

> "[50] In exercising **the power to make regulations**, the Minister **had to comply with the Constitution**, which is the supreme law, **and the empowering provisions** of the Medicines Act. If, in making regulations, the Minister exceeds the powers conferred by the empowering provisions of the Medicines Act, the Minister acts **ultra vires** (beyond the powers) and in breach of the doctrine of legality. The finding that the Minister acted ultra vires is in effect a finding that the Minister acted in a manner that is inconsistent with the Constitution and his or her conduct is invalid. What would have been ultra vires under common law by reason of a functionary exceeding his or her powers is now invalid under the Constitution as an infringement of the principle of legality. The question, therefore, is whether the Minister acted ultra vires in making regulations that link a licence to compound and dispense medicines to specific premises. The answer to this question must be sought **in the empowering provisions.**" (Our emphasis.)

7. In **Vorster and Another v Department of Economic Development, Environment and Tourism, Limpopo Province, and Others** 2006 (5) SA 291 (T) the court also stated the following in this regard:

> "[18] Lawfulness is relevant to the exercise of all public power, whether or not the exercise of such power constitutes administrative action. Lawfulness **depends on the terms of the empowering statute**. If the exercise of public power **is not sanctioned by the relevant empowering statute, it will be unlawful and invalid.**" (Our emphasis.)

8. From a reading of the above quotations, it is clear that in making regulations the Minister must comply with the Constitution, which is the supreme law of the land, and the empowering provision, which is a section 97, read with section 65 of the Act. If the Minister exceeds the powers conferred by section 97 read with section 65 of the Act, the proposed draft Regulations may be *ultra vires* and invalid.

9. Sections 97 and 65 of the Act, which are the empowering provisions, respectively provide as follows:

"Regulations

97. (1) The Minister may make regulations, after consultation with the Board, regarding -

(a) the place of meeting and the procedure to be followed at any meeting of the Director-General and assessors or at any proceedings in terms of this Act with which the assessors are concerned, or at any investigation in terms of this Act;

(b) subject to section 76, the fees payable to medical practitioners or chiropractors in respect of services rendered in terms of this Act;

(c) the procedure to be followed in paying assessments and fines to the Director-General;

(d) the persons to whom, the places where and the manner in which payment of assessments in terms of this Act shall be made;

(e) the determination of the amount and the conditions and manner of payment of benefits to assessors or classes of assessors;

(f) the disposal of moneys payable in terms of this Act to any person other than the Director-General and not claimed within the prescribed period by the person entitled thereto;

(g) any matter which shall or may be prescribed by regulation in terms of this Act;

(h) any other matter, whether or not connected with any matter mentioned in paragraphs (a) to (g), which he may deem necessary or expedient to prescribe in order to further the objects and purposes of this Act.

(2) Different regulations may be made under subsection (1) in respect of different classes of employers and employees and of different areas, and the Minister may, after consultation with the Board, in respect thereof differentiate in such manner as he or she may deem expedient.

(3) Any person who contravenes or fails to comply with any regulation made under subsection (1) shall be guilty of an offence and liable on conviction to a fine, or imprisonment for a period not exceeding six months.

Compensation for occupational diseases

65. (1) Subject to the provisions of this Chapter, an employee shall be entitled to the compensation provided for and prescribed in this Act if it is proved to the satisfaction of the Director-General-

(a) that the employee has contracted a disease mentioned in the first column of Schedule 3 and that such disease has arisen out of and in the course of his or her employment; or

(b) that the employee has contracted a disease other than a disease contemplated in paragraph (a) and that such disease has arisen out of and in the course of his or her employment.

(2) If the employee has contracted a disease referred to in subsection (1) and the commissioner is of the opinion that the recovery of the employee is being delayed or that his temporary total disablement is being prolonged by reason of some other disease of which the employee is suffering, he may approve medical aid also for such other disease for so long as he may deem it necessary.

(3) If an employee has contracted a disease referred to in subsection (1) resulting in permanent disablement and that disease is aggravated by some other disease, the Director-General may in determining the degree of permanent disablement have regard to the effect of such other disease.

(4) Subject to section 66, a right to benefits in terms of this Chapter shall lapse if any disease referred to in subsection (1) is not brought to the attention of the commissioner or the employer or mutual association concerned, as the case may be, within 12 months from the commencement of that disease.

(5) For the purposes of this Act the commencement of a disease referred to in subsection (1) shall be deemed to be the date on which a medical practitioner diagnosed that disease for the first time or such earlier date as the Director-General may determine if it is more favourable to the employee.

(6) The provisions of this Act regarding an accident shall apply mutatis mutandis to a disease referred to in subsection (1), except where such provisions are clearly inappropriate.". (Our emphasis.)

10. In the draft Regulations, "Irritant-induced Asthma" is defined as a disease characterised by variable airflow limitation and/or bronchial hyper responsiveness due to causes and conditions attributable to a particular working environment. The Act further defines "occupational disease" to mean any disease contemplated in section 65(1)(a) or (b), that is, a disease that has been contracted by an employee, which disease is mentioned in the first column of Schedule 3 such as the "occupational asthma" and that such disease has arisen out of and in the course of his or her employment.

11. Therefore, upon strict scrutiny of the provisions of section 97, read with section 65 of the Act, it would appear that the Minister is empowered to make different regulations under section 97(1), including prescribing any matter which shall or may be prescribed by regulation in terms of the Act or any other matter, whether or not connected with any matter mentioned in paragraphs (a) to (g) thereof, which he may deem necessary or expedient to prescribe in order to further the objects and purposes of the Act. It would further appear that the Minister may make different regulations under subsection (1) in respect of different classes of employers and employees and different areas, and that the Minister may, after

consultation with the Board, in respect thereof differentiate in such manner as he or she may deem expedient for any occupational asthma which could be contracted by an employee in the course of his or her employment.

***Ad* Regulation 1 - Definitions**

12. Regulation 1 provides definitions for words used throughout the draft Regulations. Subject to our comments and suggested amendments on the electronic copy of the draft Regulations, we have no concerns regarding the proposed draft regulation.

***Ad* Regulation 2 - Diagnosis**

13. Regulation 2 provides that the diagnosis for Irritant-induced Asthma shall be done by a medical practitioner and further lays down the basis as to how the diagnosis is to done and the procedures to be followed when the diagnosis is done. Sub-regulation (6) provides that medical practitioners employed by the Compensation Fund shall determine whether the diagnosis relating to Irritant-induced Asthma was made according to acceptable medical standards.

14. It appears that the current sub-regulations (2) to (5) contain aspects on which a medical practitioner will base a diagnosis of Irritant-induced Asthma, similar to the aspects contained in paragraphs (a) to (d) of the current sub-regulation (1), and not independent provisions providing for different aspects with regard to diagnosis. For this reason, we are of the view that they should be listed with the aspects contained in the current sub-regulation (1). Subject to our above comments and our comments and suggested amendments on the electronic copy of the draft Regulations, we have no concerns regarding the proposed draft regulation.

Ad Regulation 3 - Impairment

15. Regulation 3 provides the timeframes as to when the claimant could be considered permanently impaired or not and procedures or steps to be followed to come to such a diagnosis or conclusion.

16. Sub-regulation (2) provides that original copies of lung function tests must be submitted to enable the Medical practitioners to consider the acceptability of the quality of these tests and to determine the degree of impairment which will be evaluated based on lung function tests and the history of medication prescribed to control asthma.

17. Sub-regulations (3), (4) and (5) lay down further requirements to be followed to determine the impairment class regarding the Irritant-induced asthma. Subject to our comments and suggested amendments on the electronic copy of the draft Regulations, we have no concerns regarding the proposed draft regulation.

***Ad* Regulation 4 - Compensation Benefits**

18. Regulation 4 provides that payment for temporary disablement shall be made for as long as such disablement continues, but not for a period exceeding 24 months, whilst sub-regulation (2) provides that a lump sum shall be paid in terms of the Act for permanent disablement less than or equal to 30%.

19. Subject to our comments and suggested amendments on the electronic copy of the draft Regulations, we have no concerns regarding the proposed draft regulation.

***Ad* Regulation 5 – Medical Costs**

20. Regulation 5 provides that in all accepted cases of Irritant-induced Asthma, medical aid shall be provided for a period of not more than 24 months from the date of diagnosis or longer if, in the opinion of the Commissioner, further medical aid will reduce the degree of the disablement.

21. Sub-regulation (2) further provides that the medical costs shall cover diagnosis of Irritant-induced Asthma and any necessary treatment of asthma provided by any health care provider, as well as any costs of chronic medication related to Irritant-induced Asthma treatment.

22. Subject to our comments and suggested amendments on the electronic copy of the draft Regulations, we have no concerns regarding the proposed draft regulation.

***Ad* Regulation 6 - Death Benefits**

23. Regulation 6 provides what death benefits are payable to the family or dependents of the deceased employee provided that employee dies as a result of irritant-induced asthma. We have no concerns regarding the proposed draft regulation.

***Ad* Regulation 7 – Reporting**

24. Regulation 7 provides for various documentation to be submitted to the Compensation Fund or the employer who is individually liable. Subject to our suggested

amendments on the electronic copy of the draft Regulations, we have no concerns regarding the proposed draft regulation.

***Ad* Regulation 8 – Claim Processing**

25. Regulation 8 provides that the Commissioner must consider and adjudicate upon the liability of all claims, while the medical practitioners employed by the Compensation Fund are responsible for medical assessment of the claim and for the confirmation of the acceptance or rejection of the claim. Subject to our comments and suggested amendments on the electronic copy of the draft Regulations, we have no concerns regarding the proposed draft regulation.

***Ad* Regulation 9 – Effective Date of the Regulations**

26. Regulation 9 provides the name for the draft Regulations and the date when the draft Regulations will come into operation. Subject to our suggested amendments on the electronic copy of the draft Regulations, we have no concerns regarding the proposed regulation.

CONCLUSION

27. We are of the opinion that the Minister is authorised by section 97, read with section 65 of the Act to make the draft Regulations and that, subject to our aforementioned remarks and our comments and suggested amendments on the text of the draft Regulations, the provisions thereof are, as far as we could ascertain, not in conflict with the Act and the Constitution.

Yours sincerely

FOR THE OFFICE OF THE CHIEF STATE LAW ADVISER
TW MESEFO // WJJ NEL // MA OLWAGE // A JOHAAR