

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CHS. 123, 125, 129 AND 143]

Workers' Compensation Health and Safety

The Department of Labor and Industry (Department), the Bureau of Workers' Compensation (Bureau), proposes the following amendments to provide detailed regulations for the uniform processing and administration of health and safety provisions of the Workers' Compensation Act (act) (77 P. S. §§ 1—1041.4). These amendments to read as set forth in Annex A are proposed to be added as Chapter 129, and will be known as the "Workers' Compensation Health and Safety regulations." This notice of proposed rulemaking further clarifies and expands upon the previous interpretation of the act of July 2, 1993 (P. L. 190, No. 44) (Act 44) provided in the statement of policy published at 25 Pa.B. 3943 (September 16, 1995). In response to comments received and meetings with affected parties, some changes have been made to the interpretations published in the statement of policy which appears in Chapter 143 (relating to workers' compensation health and safety—statement of policy), which the Department intends to delete when the proposed addition of Chapter 129 is adopted. This notice also includes the Department's interpretation of the provision of act of June 24, 1996 (P. L. 350, No. 57) extending the one-time 5% discount for safety committee certification to a total of 5 years.

In addition, the Department is amending language of § 123.202 (relating to qualifications) to delete the requirement that an expert, who qualifies under § 123.202(4), must provide vocational rehabilitation services which include vocational testing and assessment. It was brought to the attention of the Department, after the publication of the regulations, that such a requirement may exclude experts, otherwise qualified under § 123.202(4)'s experience requirements. Section 123.202(4) was specifically designed to allow vocational experts, which had at least 5 years of experience prior to August 23, 1996, to continue to be qualified to offer their services as a vocational expert. Therefore, to ensure the proper interpretation of that section, the vocational testing and assessment requirement is deleted.

Finally, the Department proposes to amend §§ 125.133(c)(4) and 125.155(a) (relating to application; and homogeneity).

Section 125.133(c)(4) requires an applicant for group self-insurance to explain how it meets the homogeneity requirement of section 801 of the act (77 P. S. § 1036.1). Section 125.155(a) provides one set of conditions for satisfying the homogeneity requirement. These sections refer to a member's premium and manual premium, respectively, in their application. However, as a result of recent amendments to Chapter 125 (relating to workers' compensation self-insurance), neither of these terms is defined. The Department proposes to replace premium and manual premium with contributions, which is a defined term under § 125.132 (relating to definitions). This proposed change will have no practical effect on the application of the sections to existing or proposed group self-insurance funds.

Statutory Authority

This proposed rulemaking is issued under the authority provided in section 435 of the act (77 P. S. § 991), which provides that the Department will adopt regulations reasonably calculated to explain and enforce provisions of the act. This proposed rulemaking is issued under the additional authority of sections 1001 and 1002 of the act which sections require insurers and self-insurers to have accident and illness prevention programs as regulated by the Department, and also encourage the establishment of workplace safety committees under criteria established by the Department.

Background

Act 44 significantly amended the act. Among other things, Act 44 established provisions for the following: accident and illness prevention services and programs, qualification standards for accident and illness prevention services providers and the formation and certification of workplace safety committees. These amendments are designed to reduce the number and severity of accidents and illnesses within the workplace.

Since the passage of Act 44, extensive outreach and communication efforts have been undertaken to gain input from the various affected parties, including insurers, self-insured employers, group self-insurance funds, providers of accident and illness prevention services, and members of the public. Summaries of these activities follow.

On July 31, 1993, the Department published a notice at 23 Pa.B. 3626 inviting interested parties to a public meeting on August 10, 1993, to discuss a number of Act 44 issues, including those relating to health and safety. At this meeting, Department representatives encouraged those wishing to do so to submit written comments to the Bureau.

On August 28, 1993, the Department published a notice concerning implementation of Act 44 in the *Pennsylvania Bulletin* at 23 Pa.B. 4185. This notice was intended to provide timely guidance to all affected parties regarding the implementation of the health and safety provisions of Act 44. Interested parties were advised to write to the Bureau with information requests and comments.

On September 16, 1995, the Department published a statement of policy in the *Pennsylvania Bulletin* at 25 Pa.B. 3943. This statement of policy provided guidance to workers' compensation insurance carriers, self-insured employers, group self-insurance funds and employers regarding the Department's interpretation of sections 1001 and 1002 of the act, pending promulgation of final-form regulations. The statement of policy also served to inform other interested members of the public of the Department's interpretation of these provisions.

These proposed amendments further clarify and expand upon the implementation of Act 44 health and safety provisions. A number of changes have been made to the statement of policy guidelines in response to comments received from affected parties.

Act 57 modified section 1002 of the act by extending the one-time, 5% workers' compensation premium discount for being granted workplace safety committee certification to a total of 5 years. After initial committee certification, an employer may be entitled to four additional premium discounts by providing annual verification by affidavit

that the committee continues to be operative and continues to meet certification requirements.

Since the passage of Act 44 and Act 57 and the publication of the notice and statement of policy, the Bureau has received written comments, telephone inquiries, and has continually solicited participation from affected parties. Meetings with affected parties were also held to provide guidance and explanation of Act 44 implementation efforts. The Bureau also employed a Nationally recognized consultant in the field of health and safety to assist in the development of the administrative requirements and processes, qualification standards for accident and illness prevention services providers, and reporting requirements relating to accident and illness prevention services and programs imposed upon insurers, self-insured employers and group self-insurance funds.

Department efforts to provide assistance and to inform affected parties regarding health and safety provisions have included the activities listed as follows.

On April 19, 1994, the Department held a Statewide teleconference to provide information to a variety of affected parties relating to the certification of workplace safety committees. Participating in this conference were members, not only of this Department, but also representatives of the National Safety Council (NSC), recognized consultants in the field of occupational safety and health.

From March through August 1994, the Department convened an ad hoc committee to obtain input regarding qualification levels for accident and illness prevention services providers. The committee included representatives from the academic, insurer, self-insured employer, healthcare provider and other communities. Recommendations included in the final committee report were utilized in compiling the qualification levels and requirements included in the September 1995 statement of policy. Additional comments received from members of the regulated community and the findings of subsequent research are reflected in these proposed amendments.

In September 1995, the Department called a series of three meetings with representatives of insurers, self-insured employers and group self-insurance funds respectively. Draft annual reports required under the health and safety provisions of Act 44 were reviewed at these sessions by the represented affected parties. Comments and suggestions were included in later report versions, draft copies of which were released to all affected parties in April 1996. Recipients were asked to voluntarily complete and return these reports as part of a voluntary report field test. Final report drafts were mailed to members of the regulated community requesting completion and official filing with the Department as required by Act 44. Reports were sent to insurers on February 28, 1997, requesting return within 60 days. Favorable comments and responses to report format and content have been volunteered by affected parties.

In August 1996, in response to the passage of Act 57, the Department implemented procedures to renew the initial certification of employers. These amendments extended the one-time, 5% discount offered under Act 44 to a total of 5 years if, by affidavit, an employer attests to the continued operation of its certified committee according to Department criteria. Completed certification renewal affidavits were produced and mailed to employers commencing with August 23, 1996, due dates. To expedite renewal, affidavits are produced with all needed information completed, necessitating that employers only update data as required, and including a notarized signature before return for processing.

From April through June of 1997, the Department conducted official tests of the complete reporting and onsite auditing process with the assistance of three volunteer members from each of the three affected groups—licensed insurers, individual self-insured employers and group self-insurance funds. Input from affected participants resulted in modification and revisions to several areas of the process and information requirements.

Since the passage of Act 44 and Act 57, members of the Bureau have continued to participate in meetings with numerous professional organizations, safety and labor conferences and various seminars to describe the Department's interpretation of the health and safety provisions and to describe the processes that have been implemented to effect them. This participation has also provided an important vehicle for affected parties to comment and input.

This notice of proposed rulemaking further clarifies and expands upon the implementation of Act 44 and Act 57 health and safety provisions. A number of changes have been made to the August 28, 1993, notice, September 16, 1995, statement of policy in response to comments received from affected parties and as a result of the Act 57 amendments.

Purpose

The purpose of these proposed amendments is to effectuate the provisions of Act 44 and Act 57 pertaining to workplace accident and illness prevention. The amendments to sections 1001 and 1002 (77 P.S. §§ 1038.1, 1038.2) in Act 44 were designed to curtail the costs of workers' compensation coverage by reducing or eliminating workplace injuries and illnesses and reducing their severity. The amendments to section 1002(b) (77 P.S. § 1038.2) in Act 57 were designed to curtail the costs of workers' compensation coverage by providing an immediate discount based upon the continuing operation of workplace safety committees according to specified criteria.

Since the passage of Act 44 and Act 57, interested parties have requested information which provides definitive interpretations, in order that all parties will have a clear understanding of their rights and duties under the health and safety provisions of the act. These proposed amendments provide clarification regarding the accident and illness prevention program or services requirements which workers' compensation insurance carriers, self-insured employers and group self-insurance funds must comply with under Chapter 7D (77 P.S. §§ 1037.1—1037.8) and reporting requirements relating to the programs or services. These proposed amendments also specify the qualifications of accident and illness prevention services providers. Finally, these proposed amendments describe the process by which an employer may apply for certification and certification renewal of its workplace safety committee to be eligible for eligibility for the one-time premium discount established by Act 44 which was extended to a total of 5 years by Act 57.

Affected Persons

Those affected by these health and safety proposed amendments include all private and public sector employers and employees in this Commonwealth, workers' compensation insurance companies, self-insured employers, group self-insurance funds and accident and illness prevention services providers.

Fiscal Impact

The Commonwealth will incur ongoing costs related to the administration of the new statutory health and safety provisions. These costs will be chargeable to the Bureau, and funded by assessments submitted to the Workmen's Compensation Administration Fund by carriers on behalf of insured employers and by self-insured employers.

Generally, the Bureau's new program responsibilities require augmenting existing staff to review, process and evaluate applications and reports and to be able to conduct onsite audits of accident and illness prevention programs. These administrative costs, however, are a result of the statute and not these proposed amendments.

The only costs imposed on local governments are those same costs imposed upon all other employers. The Commonwealth, likewise, may have costs related to its role as a self-insured employer.

There are some potential costs to insurers and self-insured employers that may result from changes to data capture and tracking procedures necessary to produce the required information for reporting purposes. These costs are difficult to calculate, however, as changes may or may not be required. Savings will, however, be immediate to employers who apply and are granted safety committee certification or certification renewal in the form of a 5% workers' compensation premium discount. Further savings should be realized through the monitoring of the quality and availability of accident and illness prevention programs and services which are aimed toward reducing workplace injuries and illnesses and therefore improving the overall level of health and safety.

Reporting, Recordkeeping and Paperwork Requirements

Some forms have been adopted in accordance with sections 802(b)(13), 1001 and 1002 of the act as amended by Act 44 and Act 57. The information requested on the reports is required for: evaluation as to the adequacy of accident and illness prevention services or program requirements for initial or continued licensure; attestation and verification that accident and illness prevention services providers employed or contracted with insurers and self-insured employers meet qualification levels established by the Department; determination of eligibility for safety committee certification and certification renewal and resulting 5% premium discounts; determination as to whether group self-insurance fund status should be granted to an applicant group based upon preparedness to provide adequate accident and illness prevention services.

To comply with section 1001(a) of the act, insurers desiring to write workers' compensation insurance in the Commonwealth are required to file form LIBC-211I, "Initial Report of Accident and Illness Prevention Services," when applying for a license with the Insurance Department. This form has been adopted to provide information for the evaluation of the applicant-insurer's capability to provide accident and illness prevention services to prospective policyholders as required by law. Based upon the information provided, the Department will recommend a final adequate or inadequate rating determination to the Commissioner of the Insurance Department who will determine whether to grant a certificate of authority to write workers' compensation insurance to the insurer-applicant.

Section 1001(a) of the act also requires that insurers employ or otherwise make available qualified accident and illness prevention personnel who meet Department qualifications. Additionally, section 1001(e) of the act

mandates annual reporting by licensed insurers as to the accident and illness prevention services being maintained or provided to policyholders and the number and qualifications of individuals used to provide services. Form LIBC-210I, "Insurer's Annual Report of Accident and Illness Prevention Services" (AIPS), was adopted to provide information for evaluation as proof of compliance with these requirements.

As with licensed insurers, self-insured employers and group self-insurance funds exempted from privately insuring their workers' compensation liability, are required by section 1001(b) of the act to maintain an accident and illness prevention program as a prerequisite for retention of self-insured status. Section 1001(b) also requires that self-insured employers and group self-insurance funds employ or otherwise make available qualified accident and illness prevention personnel who meet Department qualifications to provide program services. Form LIBC-220E, "Annual Report of Accident and Illness Prevention Program Status by Individual Self-Insured Employers," and Form LIBC-230G, "Annual Report of Accident and Illness Prevention Program Status By Group Self-Insurance Funds," have respectively been adopted to provide information for evaluation by the Bureau to determine the adequacy of these programs and service providers according to Department-established criteria.

Additionally, a group self-insurance fund is required by § 129.454 (relating to reporting requirements—applicants for group self-insurance fund status) to file form LIBC-231G, "Initial Report of Accident and Illness Prevention Program," as a prerequisite for being granted group self-insurance fund status. The data requested on this form allows evaluation of planned program implementation for adequacy.

Section 1002 of the act states that employers may make application to the Department for the certification of any established safety committee operating within its workplace. Form LIBC-372, "Application for Certification of Workplace Safety Committee," has been adopted for use by employers. Certification criteria requirements are specified on the form.

Section 1002 also provides that employers who continue to operate workplace safety committees according to established criteria are eligible to receive a 5% discount in workers' compensation insurance premiums for a total of 5 years if after initial certification, the employer provides annual verification of the operation to the Department by affidavit. Form LIBC-372R, "Certification Renewal Affidavit of Workplace Safety Committee," has been adopted to allow information for the verification to be provided by the employer. An affidavit is automatically mailed to employers previously granted certification or certification renewal prior to the renewal of their workers' compensation policy. The employer then updates information as needed prior to returning the affidavit for review and processing.

Under Chapter 129, the Department has established proposed amendments pertaining to the health and safety provisions of the workers' compensation law. Record retention periods have been established for the purpose of documenting information provided to the Department and for possible onsite record examination.

Effective Date

These proposed amendments are effective immediately upon publication.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 4, 1999, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Labor Relations Committee and the Senate Committee on Labor and Industry (Standing Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Standing Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, Regulatory Review and Promulgation. A copy of this material is available to the public upon request.

If the Standing Committees have objections to any portion of the proposed amendments, they will notify the Department within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notifications shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments. The Regulatory Review Act specifies detailed procedures for review by the Department, prior to final publication of the proposed regulations, by the Department, the General Assembly and the Governor of objections raised prior to final publication of the final-form regulations.

Public Comment and Contact Person

For further information on this proposed rulemaking, the contact person is Len E. Negley, Chief, Health and Safety Division, Department of Labor and Industry, Bureau of Workers' Compensation, at (717) 772-1917.

Interested persons are invited to submit written comments to Len E. Negley, Chief, Health and Safety Division, Bureau of Workers' Compensation at P. O. Box 15121, Harrisburg, PA, 17105-5121 within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin. Written comments received by the Department may be made available to the public.

JOHNNY J. BUTLER, Secretary

Fiscal Note: 12-54. No fiscal impact; (8) recommends adoption.

Annex A

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

CHAPTER 123. GENERAL PROVISIONS—PART II

Subchapter C. QUALIFICATIONS FOR VOCATIONAL EXPERTS APPROVED BY THE DEPARTMENT

§ 123.202. Qualifications.

To be an expert approved by the Department for the purpose of conducting earning power assessment interviews, the individual shall possess a minimum of one of the following:

* * * * *

(4) At least 5 years experience primarily in the workers' compensation field prior to August 23, 1996, as a vocational evaluator, with experience in analyzing labor market information and conditions, industrial and occu-

pational trends, with primary duties providing actual vocational rehabilitation services, which include, but are not limited to, the following:

* * * * *

[(vi) Vocational testing and assessment.]

CHAPTER 125. WORKERS' COMPENSATION SELF-INSURANCE

Subchapter B. GROUP SELF-INSURANCE

§ 125.133. Application.

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(c) With the application, the applicant shall include:

* * * * *

(4) An explanation of the same classification series, as described under § 125.155(a) (relating to homogeneity), common to all prospective members with the amount of each member's [premium] contributions derived from the classification codes within the common series, or an explanation of how the prospective members are engaged in the same or similar types of business, as described under § 125.155(b). The Bureau may request additional information to determine the homogeneity of the applicant.

* * * * *

§ 125.155. Homogeneity.

(a) The definition of "homogeneous employer" under section 801 of the act (77 P.S. § 1036.1) and under § 125.132 (relating to definitions) is deemed satisfied as to employers who have been assigned to the same classification series if the members derive a majority of their [manual premium] contributions from codes within the same classification group listed in a manual of risk classes approved by the Commissioner of the Insurance Department under Article VII of the act (77 P.S. §§ 1035.1—1035.22).

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CHAPTER 129. WORKERS' COMPENSATION HEALTH AND SAFETY

Subchap.

- A. PRELIMINARY PROVISIONS
B. INSURER'S ACCIDENT AND ILLNESS PREVENTION SERVICES
C. INDIVIDUAL SELF-INSURED EMPLOYER'S ACCIDENT AND ILLNESS PREVENTION PROGRAMS
D. GROUP SELF-INSURANCE FUND'S ACCIDENT AND ILLNESS PREVENTION PROGRAMS
E. ACCIDENT AND ILLNESS PREVENTION SERVICES PROVIDERS QUALIFICATION STANDARDS
F. WORKPLACE SAFETY COMMITTEES
G. HEARINGS

(Editor's Note: The following chapter is new. It has been printed in regular type to enhance readability.)

Subchapter A. PRELIMINARY PROVISIONS

Sec.

- 129.1. Purpose.
129.2. Definitions.

§ 129.1. Purpose.

This subchapter provides definitions of terms used in this chapter to allow for accurate understanding of commonly and frequently used terminology.

§ 129.2. Definitions.

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

AIPS—Form LIBC-210I, “Insurer’s Annual Report of Accident and Illness Prevention Services” which provides detailed information about services being maintained or provided by a workers’ compensation insurer to its policyholders.

AIPPS—Form LIBC-220E, “Annual Report of Accident and Illness Prevention Program Status” which provides detailed information about a self-insured employer’s prevention program or prevention services being provided to employer members of a group self-insurance fund.

Accident analysis—The review of injury and illness records for the purpose of identifying trends, causal factors and methods of preventing and reducing work-related accidents and illnesses.

Accident and illness prevention services providers—A person providing accident and illness prevention services for an insurer, individual self-insured employer or group self-insurance fund who meets the qualification standards in § 129.702 (relating to accident and illness prevention services providers qualifications).

Accident and illness prevention services—Services, within the context of the act, which include: surveys, recommendations, training programs, consultations, analyses of accident causes, and industrial hygiene and industrial health services.

Act—The Workers’ Compensation Act (77 P. S. §§ 1—2626).

Act 44—The act of July 2, 1993 (P. L. 190, No. 44).

Act 57—The act of June 24, 1996 (P. L. 350, No. 57).

Affiliated company—Employers which are closely related through common ownership or control.

Applicant-employer—An insured employer, an individual self-insured employer or an employer member of a group self-insurance fund having its own separate Federal Employer Identification Number (FEIN) applying to the Bureau for certification or certification renewal of its workplace safety committee.

Application—Form LIBC-372, “Application for Certification of Workplace Safety Committee,” used to apply for Department certification.

Audit—An inspection of accident and illness prevention services or programs authorized by section 1001(c) of the act (77 P. S. § 1038.1(c)).

Bureau—The Bureau of Workers’ Compensation of the Department.

Centralized workplace safety committee—A safety committee comprised of personnel, both employer and employe representatives, who are selected from and reasonably represent those job functions located at all auxiliary or satellite employer locations, in addition to the headquarter facilities (if the headquarters facility is located in this Commonwealth) and which represents the health and safety concerns of all personnel at those auxiliary or satellite locations.

Certification—The Departmental approval of an applicant-employer’s application for certification of its workplace safety committees.

Certification renewal—Form LIBC-372R, “Certification Renewal Affidavit of Workplace Safety Committee,” used to attest to the continued operation, according to Departmental requirements, of a previously certified workplace safety committee.

Commissioner—The Insurance Commissioner of the Commonwealth.

Consultation—Providing counsel and advice relative to existing and potential hazards.

Contracted accident and illness prevention services providers—A person or organization which meets the qualification standards in § 129.702 (relating to accident and illness prevention services providers qualification) under contract with an insurer, self-insurer or group self-insurance fund for the purpose of maintaining or providing accident and illness prevention services and programs as required under the act.

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

Director—The Director of the Bureau.

Effectiveness measures—Any one of various formulas or means used by an insurer, self-insured employer or group self-insurance fund to evaluate the adequacy of accident and illness prevention programs and services.

Group self-insurance fund—A group of employers authorized by the Bureau to act as a self-insurance fund under section 802 of the act (77 P. S. § 1036.2).

Hazard identification methods—Methods used to conduct hazard identification and for providing recommendations or suggestions for the purpose of eliminating or reducing occupational accidents, injuries and illnesses. Activities may include: providing solutions, explanations, resources, reference materials and referrals.

Industrial health services—Services that include a consultation concerning the well-being of people in relation to their job and working environment. This consultation may produce recommendations aimed at identifying, controlling and preventing exposures as part of the implementation of a program of accident and illness prevention services.

Industrial hygiene services—Services that include consultation concerning suspected chemical, physical or biological exposures. This consultation may produce recommendations designed to control or prevent identified exposures and is directed toward implementing a program of accident and illness prevention services.

Insurer’s initial report of accident and illness prevention services—A report to be filed with the Insurance Department when an insurer applies for a license to write worker’s compensation insurance in this Commonwealth which details accident and illness prevention services to be maintained by or provided to policyholders.

Group self-insurance fund initial report of accident and illness prevention services—A report to be filed with the Bureau when an application for group self-insurance fund status is submitted which details accident and illness prevention services to be maintained for member companies.

Insurer—An entity subject to The Insurance Company Law of 1921 (40 P. S. §§ 341—999.1718), including the SWIF, with which an employer has insured its liability under this act under section 305 of the act (77 P. S. § 501).

Loss run—A report containing an employer’s incurred losses including the following information concerning an employe’s injury or illness: type, cause, medical cost, compensation paid and moneys reserved for claim payment.

Member—An employer participating in a group self-insurance fund.

Program evaluation methods—Methods used to review and critique accident and illness prevention programs or services to determine adequacy.

Quorum—A majority of permanent workplace safety committee members.

Recommendations—Suggestions made to employers to eliminate or reduce the occurrence of occupational accidents and resulting injury or illness.

Renewal—A new policy offered by an insurer and accepted by an employer for the next annual anniversary date of the applicant-employer's workers' compensation insurance policy after certification of its workplace safety committee.

SWIF—The State Worker's Insurance Fund.

Self-insured employer—An individual self-insured employer who is authorized by the Department to self-insure its workers' compensation liability under section 305 of the act, or a group of employers authorized by the Department to act as a group self-insurance fund under section 802 of the act.

Survey—A review of past accident records and an onsite assessment to identify existing and potential hazards and the initiation of further corrective actions, as appropriate.

Training program—Learning experiences which enable employers or employes, or both, to enhance knowledge, skills, attitudes, and motivations concerning health and safety requirements relating to operations, processes, materials and specific work environments.

Workplace—For purposes of safety committee certification, a workplace is a permanent location in this Commonwealth of the applicant employer at which full-time or permanent part-time workers perform their job duties or from which job assignments are made and administrative controls are exercised. A workplace is distinguished from a work site. A "worksites" is defined as a temporary location at which full-time or permanent part-time workers perform their job duties for a limited period of time.

Workplace safety committee—A joint employer and employee committee established at a workplace for the purpose of hazard detection and accident and illness prevention activities.

Subchapter B. INSURER'S ACCIDENT AND ILLNESS PREVENTION SERVICES

Sec.	
129.101.	Purpose.
129.102.	Accident and illness prevention service requirements.
129.103.	Obligation of an insured employer/policyholder.
129.104.	Insurer's accident and illness prevention services providers qualifications.
129.105.	Reporting requirements—applicants for licensure.
129.106.	Reporting requirements—licensed insurers.
129.107.	Report findings.
129.108.	Recordkeeping requirements.
129.109.	Periodic audits of insurer's accident and illness prevention services.
129.110.	Preaudit exchange of information.
129.111.	Site of audit.
129.112.	Written report of audit.
129.113.	Reports of progress on correcting deficiencies.
129.114.	Failure to maintain or provide adequate services.
129.115.	Contesting final rating determinations.

§ 129.101. Purpose.

This subchapter interprets the requirements of the act that an insurer desiring to write workers' compensation insurance in this Commonwealth shall maintain or provide adequate accident and illness prevention services as

a prerequisite for a license to write this insurance. Services shall be adequate to furnish accident and illness prevention required by the nature of the insurer's business or its policyholders' operations. This subchapter also establishes the criteria that the Department will employ in determining the adequacy of the services required to be maintained or provided by an insurer.

§ 129.102. Accident and illness prevention services requirements.

The following, required accident and illness prevention services components will be annually evaluated for adequacy:

(1) *Notice of availability of services.* Notice that services required by this subchapter are available to the policyholder from an insurer shall appear in at least 10 point bold type and shall accompany each workers' compensation insurance policy delivered or issued for delivery in this Commonwealth. The notice shall include information about the incentive to form a workplace safety committee as described in Subchapter F (relating to workplace safety committees). The required elements of the notice include the name, address and telephone number of the contact person for additional information about the services.

(2) *Requirements to maintain accident and illness prevention services.* An insurer shall have the capacity to provide services that are adequate to furnish accident and illness prevention required by the nature of the insurer's business or its policyholders' operations. Capacity to provide services is defined as an insurer having established means to deliver services such as those listed in paragraph (3) to policyholders who may need or request them. Capacity to provide services shall be established by an insurer utilizing its own or contracted staff who shall meet the requirements established by the Department as outlined in Subchapter E (relating to accident and illness prevention services providers qualification standards).

(3) *Requirements to provide accident and illness prevention services.*

(i) An insurer shall provide services to policyholders who may need or request them that are adequate to furnish accident and illness prevention required by the nature of the insurer's business or its policyholders' operations. Services shall be provided through an insurer's own or contracted staff who meet requirements established by the Department in Subchapter E.

(ii) Required services include the following:

(A) Onsite surveys to identify existing or potential accident and illness hazards or safety program deficiencies. Surveys shall include recommendations made to the policyholder concerning abatement of hazards or program deficiencies identified as a result of the surveys. If one or more imminent danger situations or significant program deficiencies are identified, appropriate follow-up by the insurer shall be made to determine what corrective actions a policyholder has taken and to make further recommendations, as required.

(B) Analyses of the causes of accidents and illnesses at the policyholder's worksites.

(C) Evaluations of policyholder accident and illness prevention programs, with recommendations concerning program improvements.

(D) Industrial hygiene surveys appropriate to the policyholders' needs—for example, air quality.

(E) Industrial health services appropriate to the policyholders' needs—for example, wellness programs, health

screenings, substance abuse awareness and prevention training policies and programs.

(F) Accident and illness prevention training programs.

(G) Consultations regarding specific safety and health problems and hazard abatement programs and techniques.

(H) Review of planned or newly introduced industrial materials processes, equipment, layouts and techniques to identify potential hazards and to recommend methods to mitigate hazards identified.

(I) Training programs specifically designed for safety committee members such as those created under Subchapter F which include hazard inspection, accident investigation and safety committee operation.

§ 129.103. Obligation of an insured employer/policyholder.

An insured employer/policyholder requesting accident and illness prevention services as mandated by the act is obligated to provide the necessary information and access to the insurer to permit the insurer to fulfill its requirements under the act.

§ 129.104. Insurer's accident and illness prevention services providers qualifications.

(a) Accident and illness prevention services providers employed by or contracted with an insurer to perform accident and illness prevention services shall meet the qualifications specified in Subchapter E (relating to accident and illness prevention services providers qualification standards).

(b) The Bureau may require the insurer to provide proof that the qualifications for accident and illness prevention services providers have been met by each individual providing accident and illness prevention services, whether employed or under contract, based on the criteria in Subchapter E.

§ 129.105. Reporting requirements—applicants for licensure.

(a) As part of their application package for a certificate of authority submitted to the Insurance Department, applicants for a license to write workers' compensation insurance shall provide information on their accident and illness prevention services required under § 129.102 (relating to accident and illness prevention services requirements) using Form LIBC-211I, "Insurer's Initial Report of Accident and Illness Prevention Services."

(b) Failure to maintain or provide the accident prevention services is a violation of the act and an inadequate rating determination will also be reported to the Director for review in accordance with § 129.114 (relating to failure to maintain or provide adequate services).

(c) As part of the process of licensing to write workers' compensation insurance in this Commonwealth, the Insurance Department will forward to the Bureau the report in subsection (a) for a determination of adequacy. The Bureau will provide a determination of adequate or inadequate to the Commissioner.

§ 129.106. Reporting requirements—licensed insurers.

A licensed insurer shall, by March 1 of each year, provide the Bureau with information concerning accident and illness prevention services offered or provided to the insurer's policyholders during the preceding calendar year. The information shall be provided using Form AIPS and will be subject to Bureau verification.

§ 129.107. Report findings.

Upon receipt of a report required under § 129.105 or § 129.106 (relating to reporting requirements—applicants for licensure; and reporting requirements—licensed insurance), the Bureau will review the report data and make determinations of the adequacy or inadequacy of services being maintained or provided. Insurers will receive notification of adequate rating determinations. Final rating determinations of inadequate will be forwarded to the Director. The Director will provide notification to the Commissioner and to the insurer.

§ 129.108. Recordkeeping requirements.

Insurers shall maintain records of accident and illness prevention services by policyholder for the most complete current calendar year and 2 preceding consecutive calendar years which include:

- (1) The dates of the requests for services.
- (2) The services requested or problems presented.
- (3) The dates on which services were provided.
- (4) The number of hours expended providing services, including both onsite and preparatory time.
- (5) The number of service visits.
- (6) Service reports including recommendations.
- (7) The dates on which services were provided and policyholder's responses to recommendations.
- (8) The final disposition of requests.
- (9) The results of industrial hygiene and health surveys and consultations.
- (10) Accident and illness prevention training conducted.
- (11) Safety-related materials provided.

§ 129.109. Periodic audits of insurer's accident and illness prevention services.

(a) The Bureau may audit the accident and illness prevention services of each licensed insurer, including accident and illness prevention services providers qualifications, at least once every 2 years to determine the adequacy of the insurer's accident and illness prevention services.

(b) At least 60 calendar days prior to an audit, the Bureau will notify the insurer in writing of the date on which the audit will occur.

§ 129.110. Preaudit exchange of information.

(a) At least 45 calendar days prior to the audit, the insurer shall provide the Bureau with:

(1) A completed, annual AIPS report for the most recently completed calendar year and if requested, the AIPS reports for the 2 preceding consecutive calendar years including those of its affiliated companies, if applicable.

(2) A list of current insured employers/policyholders specifying name and premium size grouping which: received services; requested but did not receive services; have certified workplace safety committees; and a description of the type of accident and illness prevention services provided during the last completed calendar year.

(3) The name, address, business telephone number, qualifications and status (whether employed or contracted) of each person acting as an accident and illness prevention services provider for the insurer.

(b) The list of insured employers/policyholders will be kept confidential by the Bureau.

(c) Within 10 calendar days of receipt of the list of insured employers/policyholders, the Bureau will notify the insurer of the accounts selected for audit and the accident and illness prevention services information required concerning these accounts.

(d) At least 15 calendar days prior to the date of the audit, the insurer shall provide the account information referenced in subsection (c) to the Bureau.

(e) If the information necessary for the audit is not furnished in a timely manner, the Bureau may cancel the audit, and a final rating determination of inadequate will be forwarded to the Director. The Director will provide notification to the Commissioner and to the insurer. A rating may be challenged by the insurer in accordance with Subchapter G (relating to hearings).

§ 129.111. Site of audit.

(a) The audit of the insurer's accident and illness prevention services will take place at the insurer's main office in this Commonwealth unless otherwise agreed by the Bureau and the insurer. If the insurer has no office in this Commonwealth, the audit will take place at the Bureau's headquarters.

(b) The insurer shall provide the documentation requested or required by the Bureau at the site where the audit will occur.

§ 129.112. Written report of audit.

(a) After the conclusion of the audit, a report of findings including a final determination of adequate or inadequate will be written.

(b) The insurer will be notified of a final rating determination of adequate.

(c) If a rating determination of inadequate is assigned, specific deficiencies will be listed along with the actions necessary to correct them. Within 60 calendar days, the insurer shall comply with these recommendations, and provide satisfactory proof of correction to the Bureau. At the end of the 60 calendar day period, a final rating determination of adequate or inadequate will be assigned. The insurer will receive notification of an adequate rating. Notice of an inadequate rating will be forwarded to the Director. The Director will provide notification to the Commissioner and to the insurer.

§ 129.113. Reports of progress on correcting deficiencies.

An insurer shall file a plan of correction including a timetable for correction, acceptable to the Bureau, for any deficiency requiring more than 60 calendar days to correct. Periodic progress reports shall be filed by the insurer detailing corrective actions. The Bureau may conduct periodic audits to confirm information submitted in progress reports. At the end of the 60 calendar day correction period, a final rating determination of adequate or inadequate will be assigned. The insurer will receive notification of an adequate rating. Notice of an inadequate rating will be forwarded to the Director. The Director will provide notification to the Commissioner and to the insurer.

§ 129.114. Failure to maintain or provide adequate services.

Under Chapter 7D of the act (77 P.S. §§ 1037.1—1037.8), failure to establish, maintain or provide accident and illness prevention services, using qualified personnel,

and to provide proof of these services required under the act, may result in the Department issuing an order to show cause that may also result in one or both of the following:

(1) Denial or revocation of the privilege of writing workers' compensation insurance in this Commonwealth by the Commissioner.

(2) Finding of a civil violation of the act, subject to a maximum penalty of \$2,000 per day, under section 1001 of the act (77 P.S. § 1038.1).

§ 129.115. Contesting final rating determinations.

A party wishing to contest a final rating determination shall do so under Subchapter G (relating to hearings).

Subchapter C. INDIVIDUAL SELF-INSURED EMPLOYER'S ACCIDENT AND ILLNESS PREVENTION PROGRAMS

Sec.	
129.401.	Purpose.
129.402.	Program requirements.
129.403.	Individual self-insured employer's accident and illness prevention services providers qualifications.
129.404.	Reporting requirements—individual self-insured employers.
129.405.	Report findings.
129.406.	Recordkeeping requirements.
129.407.	Periodic audits of individual self-insured employer's accident and illness prevention program.
129.408.	Preaudit exchange of information.
129.409.	Site of audit.
129.410.	Written report of audit.
129.411.	Reports of progress on correcting deficiencies.
129.412.	Failure to maintain an adequate program.
129.413.	Contesting final rating determinations.

§ 129.401. Purpose.

This subchapter interprets the requirements of the act that an individual self-insured employer shall maintain an adequate accident and illness prevention program as a prerequisite for retention of its self-insured status. The subchapter establishes the criteria that the Bureau will employ in determining the adequacy of the accident and illness prevention program required to be maintained by an individual self-insured employer.

§ 129.402. Program requirements.

(a) An individual self-insured employer shall maintain an adequate accident and illness prevention program and maintain records for this program for the 3 most current, complete fiscal years. The program shall include the following elements:

- (1) A safety policy statement.
- (2) A designated accident and illness prevention program coordinator.
- (3) Assignment of responsibilities for developing, implementing and evaluating the accident and illness prevention program.
- (4) Program goals and objectives.
- (5) Methods for identifying and evaluating hazards and developing recommendations for their mitigation.
- (6) Industrial hygiene surveys appropriate to the nature of the individual self-insured employer's workplace environment—for example, air quality.
- (7) Industrial health services appropriate to the individual self-insured employer's workplace environment—for example, wellness programs, health screenings, substance abuse awareness and prevention training programs.
- (8) Accident and illness prevention orientation and training.

(9) Regularly reviewed and updated emergency action plans.

(10) Employee accident and illness prevention suggestion and communications programs.

(11) Mechanisms for employee involvement, which may include establishment of a workplace safety committee as described in Subchapter F (relating to workplace safety committees).

(12) Established safety rules and methods for their enforcement.

(13) Methods for accident investigation, reporting and recordkeeping.

(14) Prompt availability of first aid, CPR and other emergency treatments.

(15) Methods for determining and evaluating program effectiveness. These may include:

(i) Comparison of the individual self-insured employer's incidence rate as derived using the Occupational Health and Safety Administration (OSHA)/United States Department of Labor Bureau of Labor Statistics (BLS) formula to the current OSHA/BLS industry-wide rate published annually in the BLS "Survey of Occupational Injuries and Illnesses."

(ii) Comparison of individual employer injury and illness rates determined by means of a formula prescribed by the Bureau to current, Statewide rates by industry published annually by the Bureau in the "Pennsylvania Work Injuries and Illnesses" report.

(iii) Experience modification factor.

(iv) Loss ratio.

(v) Other methods used by individual self-insured employers deemed appropriate by the Bureau.

(16) Protocols or standard operating procedures, when applicable to the workplace environment for:

(i) Electrical and machine safeguarding.

(ii) Personal protective equipment.

(iii) Hearing and sight conservation.

(iv) Lockout/tagout procedures.

(v) Hazardous materials handling, storage and disposal procedures.

(vi) Confined space entry procedures.

(vii) Fire prevention and control practices.

(viii) Substance abuse awareness and prevention policies and programs.

(ix) Control of exposure to bloodborne pathogens.

(x) Preoperational process reviews.

(xi) Others as may be appropriate for the individual self-insured employer's worksite operations.

(b) Individual self-insured employers shall maintain records describing the comparison methods chosen from subsection (a)(15) for the most current complete fiscal year and 2 preceding consecutive fiscal years. Those records shall contain at a minimum:

(1) The annual calculated rates for the methods chosen.

(2) A copy of the calculations used to determine the annual rates.

(3) A copy of the sources containing the complete data used in calculating the annual rates.

§ 129.403. Individual self-insured employer's accident and illness prevention services providers qualifications.

(a) Accident and illness prevention services providers employed by an individual self-insured employer or serving through a contract to perform accident and illness prevention services shall meet the qualifications in Subchapter E (relating to accident and illness prevention services providers qualification standards).

(b) The Bureau may require the individual self-insured employer to provide proof that the qualifications for accident and illness prevention services providers have been met by each individual providing accident and illness prevention services, whether employed or under contract, based on the criteria in Subchapter E.

§ 129.404. Reporting requirements—individual self-insured employers.

(a) At the time of reapplication for renewal of self-insurance status, an individual self-insured employer shall, as required under section 815 of the act (77 P. S. § 1036.15), provide the Bureau with detailed information on its accident and illness prevention program using form AIPPS, for the last complete fiscal year preceding the date of the renewal application.

(b) Report information shall be subject to Bureau verification.

§ 129.405. Report findings.

Upon receipt of the report required under § 129.404 (relating to reporting requirements—individual self-insured employers), the Bureau will review the report data and formulate determinations as to the adequacy or inadequacy of programs. Employers will receive notification of adequate rating determinations. Final rating determinations of inadequate will be forwarded to the Director who will provide notification to the employer and initiate appropriate action regarding the continuance of self-insurance status.

§ 129.406. Recordkeeping requirements.

Individual self-insured employers shall maintain records of accident and illness prevention program services for the most complete fiscal year and 2 preceding consecutive fiscal years which include:

(1) The dates of requests for services.

(2) The services requested or problems presented.

(3) The dates on which services were provided.

(4) The number of hours expended providing services, including both onsite and preparatory time.

(5) The number of service visits.

(6) Service reports including recommendations.

(7) The results of industrial hygiene and health surveys and consultations.

(8) Accident and illness prevention training conducted.

(10) Safety-related materials provided.

§ 129.407. Periodic audits of individual self-insured employer's accident and illness prevention program.

(a) The Bureau may audit the accident and illness prevention program of an individual self-insured employer including accident and illness prevention services providers qualifications, at least once 2 years to determine the adequacy of the employer's accident and illness prevention program.

(b) A combined audit may be conducted for affiliated companies of an individual self-insured employer if the same facilities, accident and illness prevention program, and accident and illness prevention services providers are used by each of the companies.

(c) At least 60 calendar days prior to an audit, the Bureau will notify the individual self-insured employer in writing of the date on which the audit will occur.

§ 129.408. Preaudit exchange of information.

(a) At least 45 calendar days prior to the audit, the individual self-insured employer shall provide the Bureau with:

(1) A completed, annual AIPPS report for the most recently completed fiscal year and, if requested, the AIPPS reports for the 2 preceding consecutive fiscal years including those of its affiliated companies, if applicable.

(2) The name, address and telephone number of the contact person.

(3) A description of the types of accident and illness prevention program services provided during the last completed fiscal year.

(4) The name, address, business telephone number, qualifications and status (whether employed or contracted) of each person acting as an accident and illness prevention services provider for the individual self-insured employer.

(b) At least 15 calendar days prior to the date of the audit, the individual self-insured employer shall provide the Bureau with information on forms prescribed by the Bureau that describe the employer's accident and illness prevention program.

(c) If the information necessary for the audit is not furnished in a timely manner, the Bureau may cancel the audit, and a final rating determination of inadequate will be forwarded to the Director. The Director will provide notification to the employer and initiate appropriate action regarding continuance of self-insurance status. A rating may be challenged by the insurer in accordance with Subchapter G (relating to hearings).

§ 129.409. Site of audit.

(a) The audit of the individual self-insured employer's accident and illness prevention program will take place at the employer's main office in this Commonwealth unless otherwise agreed by the Bureau and the employer. If the individual self-insured employer has no office in this Commonwealth, the audit will take place at the Bureau's headquarters.

(b) The individual self-insured employer shall provide the documentation requested or required by the Bureau at the site where the audit will occur.

§ 129.410. Written report of audit.

(a) After the conclusion of the audit, a report of findings including a final determination of adequate or inadequate will be written.

(b) The individual self-insured employer will be notified of a final rating determination of adequate.

(c) If a rating determination of inadequate is assigned, specific deficiencies will be listed along with the actions necessary to correct them. Within 60 calendar days, the employer shall comply with these recommendations, and provide satisfactory proof of correction to the Bureau. At the end of the 60 calendar day period, a final rating determination of adequate or inadequate will be assigned.

The employer will receive notification of an adequate rating. Notice of an inadequate rating will be forwarded to the Director. The Director will provide notification to the employer and initiate appropriate action regarding continuance of self-insurance status.

§ 129.411. Reports of progress on correcting deficiencies.

An individual self-insured employer shall file a plan of correction including a timetable for correction, acceptable to the Bureau, for any deficiency requiring more than 60 calendar days to correct. Periodic progress reports shall be filed by the employer detailing corrective actions. The Bureau may conduct periodic audits to confirm information submitted in progress reports. At the conclusion of the correction period, a final rating determination of adequate or inadequate will be assigned. The employer will receive notification of an adequate rating. Final rating determinations of inadequate will be forwarded to the Director. The Director will notify the employer and initiate appropriate action regarding continuance of self-insurance status.

§ 129.412. Failure to maintain an adequate program.

Under Chapter 7D of the act (77 P.S. § 1037.1—1037.8), failure to establish or maintain an accident and illness prevention program, using qualified personnel, and to provide proof of these services required under the act may result in the Department issuing an order to show cause that may also result in one or both of the following:

(1) Denial or revocation of the privilege of self-insurance status in this Commonwealth by the Bureau.

(2) Finding of a civil violation of the act, subject to a maximum penalty of \$2,000 per day, under section 1001 of the act (77 P.S. § 1038.1).

§ 129.413. Contesting final rating determinations.

A party wishing to contest a final rating determination shall do so under Subchapter G (relating to hearings).

Subchapter D. GROUP SELF-INSURANCE FUND'S ACCIDENT AND ILLNESS PREVENTION PROGRAMS

Sec.	Purpose.
129.451.	Purpose.
129.452.	Program requirements.
129.453.	Group self-insurance fund accident and illness prevention services providers qualifications.
129.454.	Reporting requirements—applicants for group self-insurance fund status.
129.455.	Reporting requirements—group self-insurance funds.
129.456.	Report findings.
129.457.	Service requirements.
129.458.	Recordkeeping requirements.
129.459.	Periodic audits of group self-insurance fund's accident and illness prevention program.
129.460.	Preaudit exchange of information.
129.461.	Site of audit.
129.462.	Written report of audit.
129.463.	Reports of progress on correcting deficiencies.
129.464.	Failure to maintain or provide an adequate program.
129.465.	Contesting final rating determinations.

§ 129.451. Purpose.

This subchapter establishes the criteria that the Bureau will employ in determining the adequacy of the accident and illness prevention program required by a group self-insurance fund under the act as a prerequisite for retention of group self-insurance fund status.

§ 129.452. Program requirements.

(a) A group self-insurance fund shall maintain or provide an adequate accident and illness prevention program

and maintain records for this program for the 3 most current fiscal years. The program shall contain the following elements:

- (1) A safety policy statement.
- (2) A designated accident and illness prevention program coordinator.
- (3) An assignment of responsibilities for implementing and evaluating the accident and illness prevention program.
- (4) Program goals and objectives.
- (5) Mechanisms for employe involvement, which may include establishment of a workplace safety committee including a safety committee as described in Subchapter F (relating to accident and illness prevention services providers qualification standards).
- (6) Employe accident and illness prevention suggestion and communications programs.
- (7) Methods for accident investigation, reporting and recordkeeping.
- (8) Methods for determining and evaluating program effectiveness. These may include:
 - (i) Comparison of the group self-insurance fund incidence rate as derived using the Occupational Health and Safety Administration (OSHA)/Bureau of Labor Statistics (BLS) formula to the current, published OSHA/BLS industrywide rate.
 - (ii) Comparison of the group self-insurance fund injury and illness rates determined by means of a formula prescribed by the Bureau to current, published Statewide rates by industry.
 - (iii) Experience modification factor.
 - (iv) Loss ratio.
 - (v) Other methods used by group self-insurance funds deemed appropriate by the Bureau.
- (9) Protocols or standard operating procedures, when applicable, to the workplace environment for:
 - (i) Electrical and machine safeguarding.
 - (ii) Personal protective equipment.
 - (iii) Hearing and sight conservation.
 - (iv) Lockout/tagout procedures.
 - (v) Hazardous materials handling, storage and disposal procedures.
 - (vi) Confined space entry procedures.
 - (vii) Fire prevention and control practices.
 - (viii) Substance abuse awareness and prevention policies and programs.
 - (ix) Control of exposure to bloodborne pathogens.
 - (x) Preoperational process reviews.
 - (xi) Others as may be appropriate for members' worksite operations.

(b) Group self-insurance funds shall maintain records describing the comparison methods chosen from subsection (a)(8) for the most current fiscal year and 2 preceding consecutive fiscal years. Those records shall contain at a minimum:

- (1) The annual calculated rates for the methods chosen.
- (2) A copy of the calculations used to determine the annual rates.

(3) A copy of the sources containing the complete data used in calculating the annual rates.

§ 129.453. Group self-insurance fund accident and illness prevention services providers qualifications.

(a) Accident and illness prevention services providers employed by a group self-insurance fund or serving through a contract to perform accident and illness prevention services shall meet the qualifications specified in Subchapter E (relating to accident and illness prevention services providers qualification standards).

(b) The Bureau may require the group self-insurance fund to provide proof that the qualifications for accident and illness prevention services providers have been met by each individual providing accident and illness prevention services, whether employed or under contract, based on the criteria in Subchapter E.

§ 129.454. Reporting requirements—applicants for group self-insurance fund status.

(a) As part of its application package for group self-insurance fund status submitted to the Bureau, an applicant for self-insurance fund status shall provide the Bureau with detailed information on its accident and illness prevention program that will be offered or provided to fund members as required under § 129.457 (relating to service requirements) using form LIBC-231G, "Initial Report of Accident and Illness Prevention Program Status."

(b) As part of the process of granting group self-insurance fund status, the Bureau will use this information to determine whether to grant group self-insurance fund status.

§ 129.455. Reporting requirements—group self-insurance funds.

(a) A group self-insurance fund shall provide the Bureau with detailed information on its accident and illness prevention program using Form LIBC-230G, "Annual Report of Accident and Illness Prevention Program Status By Group Self-Insurance Funds," along with the annual report to the Bureau required under section 815 of the act (77 P. S. § 1036.15).

(b) A group self-insurance fund shall also provide information describing the established methods used to identify individual fund members requiring accident and illness prevention services. A group self-insurance fund shall also provide data describing accident and illness prevention services efforts for the identified members and the effectiveness of these efforts in improving injury and illness rates.

(c) Report information shall be subject to Bureau verification.

§ 129.456. Report findings.

Upon receipt of a report required under § 129.454 or § 129.455 (relating to reporting requirements—applicants for group self-insurance fund status; and reporting requirements—group self-insurance funds), the Bureau will review the report data and formulate determinations as to the adequacy or inadequacy of programs. Group self-insurance funds will receive notification of adequate rating determinations. Final rating determinations of inadequate will be forwarded to the Director who will provide notification to the group self-insurance fund and initiate appropriate action regarding the continuance of group self-insurance fund status.

§ 129.457. Service requirements.

A group self-insurance fund shall maintain or provide through its own or contracted accident and illness prevention services providers the following accident and illness prevention services to members:

(1) Onsite surveys to identify existing or potential accident and illness hazards or safety program deficiencies. Recommendations shall be made to the fund member concerning abatement of hazards or program deficiencies identified as a result of the surveys. If one or more imminent danger situations or program deficiencies are identified, at least one follow-up visit shall be made to determine what corrective action the fund member has taken and to make further recommendations, if required.

(2) Analyses of the causes of accidents and illnesses at the members' worksites.

(3) Industrial hygiene surveys appropriate to the members' needs—for example, air quality.

(4) Industrial health services appropriate to members' needs—for example, wellness programs and health screenings.

(5) Accident and illness prevention training programs, including safety committee training.

(6) Onsite and telephone consultations regarding specific safety and health problems and hazard abatement programs and techniques.

(7) Review of planned or newly introduced industrial materials, processes, equipment, layouts and techniques to identify potential hazards and to recommend methods to mitigate any hazards identified.

§ 129.458. Recordkeeping requirements.

(a) Group self-insurance funds shall maintain records of accident and illness prevention programs or services for each member for the most complete current fiscal year and 2 preceding consecutive fiscal years which include:

- (1) The dates of requests for services.
- (2) The services requested or problems presented.
- (3) The dates of the group self-insurance fund's responses.
- (4) The dates on which services were provided and member responses to recommendations.
- (5) The number of hours expended providing services including both onsite and preparatory time.
- (6) The final disposition of requests.
- (7) The number of service visits.
- (8) Service reports including recommendations.
- (9) The results of industrial hygiene and industrial health surveys and consultations.
- (10) Accident and illness prevention training conducted.
- (11) Safety-related materials provided.
- (12) Member responses to group self-insurance fund recommendations.

(b) Group self-insurance funds shall annually solicit comments from its members regarding the effectiveness of the accident and illness prevention program provided by the group self-insurance fund. This information shall be made available to the Bureau upon request.

§ 129.459. Periodic audits of group self-insurance fund's accident and illness prevention program.

(a) The Bureau may audit the accident and illness prevention program of a group self-insurance fund including accident and illness prevention services providers' qualifications at least once every 2 years to determine the adequacy of the fund's accident and illness prevention program.

(b) A combined audit may be conducted for affiliated companies of a group self-insurance fund if the same facilities, accident and illness prevention program, and accident and illness prevention services providers are used by each of the companies.

(c) At least 60 calendar days prior to an audit, the Bureau will notify the group self-insurance fund administrator in writing of the date on which the audit will occur.

§ 129.460. Preaudit exchange of information.

(a) At least 45 calendar days prior to the audit, the group self-insurance fund administrator shall provide the Bureau with:

(1) A completed annual AIPPS report as prescribed by the Bureau for the most recently completed fiscal year and, if requested, the AIPPS reports for 2 preceding consecutive fiscal years including those of its affiliated companies, if applicable.

(2) A list of the fund members, including the company name, address, telephone number and contact person. Indicate the types of accident and illness prevention services provided to selected fund members during the last completed group self-insurance fund fiscal year.

(3) The name, address, business telephone number, qualifications and status (whether employed or contracted) of each person acting as an accident and illness prevention services provider for the group self-insurance fund.

(b) The list of fund members will be kept confidential by the Bureau.

(c) At least 15 calendar days prior to the date of the audit, the fund administrator shall provide the Bureau with information on forms prescribed by the Bureau that describe the selected fund member's accident and illness prevention program.

(d) If the information necessary for the audit is not furnished in a timely manner, the Bureau may cancel the audit, and a final rating determination of inadequate will be forwarded to the Director. The Director will notify the fund administrator and initiate appropriate action regarding continuance of group self-insurance fund status. A rating may be challenged by the fund administrator in accordance with Subchapter G (relating to hearings).

§ 129.461. Site of audit.

(a) The audit of the group self-insurance fund's accident and illness prevention program will take place at the fund administrator's main office in this Commonwealth unless otherwise agreed by the Bureau and the fund administrator. If the group self-insurance fund has no office in this Commonwealth, the audit will take place at the Bureau's headquarters.

(b) The group self-insurance fund shall provide all documentation requested or required by the Bureau at the site where the audit will occur.

§ 129.462. Written report of audit.

(a) At the conclusion of the audit, a report of findings including a final determination of adequate or inadequate will be written.

(b) The group self-insurance fund will be notified of a final rating determination of adequate.

(c) If a rating determination of inadequate is assigned, specific deficiencies will be listed along with the actions necessary to correct them. Within 60 calendar days, the group self-insurance fund administrator shall comply with these recommendations, and provide satisfactory proof of correction to the Bureau. At the end of the 60 calendar day period, a final rating determination of adequate or inadequate will be assigned. The group self-insurance fund administrator will receive notification of an adequate rating. Notice of an inadequate rating will be forwarded to the Director. The Director will provide notification to the group self-insurance fund administrator and initiate appropriate action regarding continuance of group self-insurance fund status.

§ 129.463. Reports of progress on correcting deficiencies.

A group self-insurance fund administrator shall file a plan of correction including a timetable for correction, acceptable to the Bureau, for any deficiency requiring more than 60 calendar days to correct. Periodic progress reports shall be filed by the group self-insurance fund administrator detailing corrective actions. The Bureau may conduct periodic audits to confirm information submitted in progress reports. At the conclusion of the correction period, a final rating determination of adequate or inadequate will be assigned. The group self-insurance fund administrator will receive notification of an adequate rating. Final rating determinations of inadequate will be forwarded to the Director. The Director will notify the group self-insurance fund administrator and initiate appropriate action regarding continuance of group self-insurance fund status.

§ 129.464. Failure to maintain or provide an adequate program.

Under Chapter 7D of the act (77 P.S. §§ 1037.1—1037.8), failure to establish, maintain or provide accident and illness prevention services, using qualified personnel, and to provide proof of these services required under the act may result in the Department issuing an order to show cause that may also result in one or both of the following:

(1) Denial or revocation of the privilege of group self-insurance fund status in this Commonwealth by the Bureau.

(2) Finding of a civil violation of the act, subject to a maximum penalty of \$2,000 per day, under section 1001 of the act (77 P.S. § 1038.1).

§ 129.465. Contesting final rating determinations.

A party wishing to contest a final rating determination shall do so under to Subchapter G (relating to hearings).

Subchapter E. ACCIDENT AND ILLNESS PREVENTION SERVICES PROVIDERS QUALIFICATION STANDARDS

- Sec.
- 129.701. Purpose and scope.
- 129.702. Accident and illness prevention services providers qualifications.
- 129.703. Procedures for obtaining designation recognition.
- 129.704. Proof of accident and illness prevention services providers qualifications and experience.

§ 129.701. Purpose and scope.

This subchapter sets forth the qualification standards for accident and illness prevention services providers. These qualifications apply only to those individuals either directly employed by or retained under contract with either a workers' compensation insurer, self-insured employer or group self-insurance fund and who provide accident and illness prevention services for the workers' compensation insurers' policyholders, the self-insured employer or group self-insurance fund members. Procedures by which organizations and associations may apply for recognition of designations or certifications are also outlined.

§ 129.702. Accident and illness prevention services providers qualifications.

(a) A workers' compensation insurer, individual self-insured employer or group self-insurance fund shall directly employ qualified accident and illness prevention services providers or shall retain qualified contracted accident and illness prevention services providers as described in this section to provide accident and illness prevention services.

(b) An individual providing accident and illness prevention services as an employe or contracted accident and illness prevention services provider shall be responsible for supplying annual proof of his current qualifications to the insurer, individual self-insured employer or group self-insurance fund.

(c) The insurer, self-insured employer or group self-insurance fund administrator shall be responsible for reviewing proof of accident and illness prevention services providers qualifications according to the criteria in subsection (d). Verification shall be submitted to the Bureau as part of annual reports of accident and illness prevention services and programs specifying that all employed or contracted accident and illness prevention services providers providing accident and illness prevention services during the reporting period meet current, approved qualifications.

(d) An individual shall be recognized as a qualified accident and illness prevention services provider within the meaning of section 1001 (a) and (b) of the act (77 P.S. § 1038.1(a) and (b)) and this subchapter, by providing verification that the individual possesses one or more of the following qualifications:

(1) An educational degree or certification recognized by the Bureau in accident and illness prevention fields from accredited institutions or programs and at least 2 years of acceptable experience as set forth in subsection (e).

(2) A certification or designation recognized by the Bureau from a professional organization in the field of accident and illness prevention and at least 2 years of acceptable experience in subsection (e).

(3) A certification or designation from an industry-specific accident and illness prevention program recognized by the Bureau and at least 2 years of acceptable experience as set forth in subsection (e). Holders of recognized certifications or designations will be restricted to the delivery of accident and illness prevention services as defined by the specific program within a given industry.

(e) The 2 years of accident and illness prevention experience required in subsection (d) shall include current, full-time professional experience providing accident and illness prevention services which accounts for at least 60% of the individual's activities. Acceptable

activities include: identifying hazards, conducting safety and health surveys, providing corrective recommendations, analyzing accident causes, and recommending or providing industrial hygiene and industrial health surveys and consultations.

(f) The Bureau will maintain a listing of recognized organizational certifications or designations. Inquiries may be made to the Bureau for current information reflecting additions or deletions to that listing.

(g) A person who is currently employed by an insurer, individual self-insured employer or group self-insurance fund to provide accident and illness prevention services and who does not possess any Bureau recognized qualifications as outlined in subsection (d) shall have 5 years from the filing date of the annual report on which the accident and illness prevention services providers is first listed, to meet one or more of the requirements listed in subsection (d). The activities of accident and illness prevention services providers claiming this category of qualification shall be directed by a services provider currently holding a recognized qualification during the 5-year period in which a recognized credential is being earned. After that 5-year period, an individual who has not obtained a recognized qualification and submitted acceptable proof to the Bureau, through the employing or contracting insurer, individual self-insured employer or group self-insurance fund may not be recognized as a qualified accident and illness prevention services provider for purposes of the act and this chapter.

§ 129.703. Procedures for obtaining designation recognition.

The Bureau will accept applications from educational programs, certifying organizations or specific industry programs requesting recognition of designations or certifications. The form and content of applications will be specified by the Bureau. Appeals from a denial of designation recognition may be taken in accordance with Subchapter G (relating to hearings).

§ 129.704. Proof of accident and illness prevention services providers' qualifications and experience.

Proof of an individual's qualifications and experience as an accident and illness prevention services provider shall be maintained by the insurer, individual self-insured employer or group self-insurance fund. For audit purposes, the proof of qualification for each accident and illness prevention services provider shall be retained for the most complete current year and 2 preceding consecutive years.

Subchapter F. WORKPLACE SAFETY COMMITTEES

Sec.

- 129.1001. Purpose.
- 129.1002. Application for initial certification.
- 129.1003. Minimum eligibility requirements.
- 129.1004. Committee formation and membership.
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- 129.1006. Committee member training.
- 129.1007. Certification.
- 129.1008. Certification renewal affidavit.
- 129.1009. Information verification.
- 129.1010. Recordkeeping requirements.
- 129.1011. Contesting final determinations.

§ 129.1001. Purpose.

This subchapter sets forth the certification criteria for the operation of workplace safety committees established for the purpose of accident and illness prevention. An applicant-employer shall meet the criteria in this

subchapter to obtain certification or certification renewal of its workplace safety committees for its workplaces within this Commonwealth.

§ 129.1002. Application for initial certification.

(a) An applicant-employer desiring to apply for certification of its workplace safety committee shall file form LIBC-372, "Application for Certification of Workplace Safety Committee," with the Bureau. An application shall be filed for each legal entity of the applicant-employer.

(b) For the purpose of certification, an applicant-employer shall file one application which shall incorporate all of the applicable applicant-employer workplaces within this Commonwealth.

(c) Applications shall be submitted to the Bureau between 90 and 30 calendar days prior to the annual renewal of a workers' compensation policy, self-insurance renewal year or group self-insurance fund year.

§ 129.1003. Minimum eligibility requirements.

(a) An applicant-employer's committees shall be located within this Commonwealth.

(b) The committee shall be in existence and operating according to the requirements of this subchapter for 6 full, consecutive calendar months prior to the signing, dating and submission of the application.

(c) The committee membership shall reasonably represent all of the job activities of the workplaces it represents.

(d) The committees shall be composed of a minimum of two employer-representatives and a minimum of two employe-representatives.

(e) Employer-representatives include foremen, supervisory and managerial personnel and are individuals who, regardless of job title or labor organization affiliation, function in the capacity of employer representative, based upon an examination of that individual's authority or responsibility to do one or more of the following:

- (1) Select or hire an employe.
- (2) Remove or terminate an employe.
- (3) Direct the manner of employe performance.
- (4) Control the employe.

(f) Employe-representatives are individuals who perform services for an employer for valuable consideration and do not possess any authority or responsibility described in subsection (e).

(g) A person may not function as both an employer-representative and an employe-representative.

§ 129.1004. Committee formation and membership.

(a) An applicant-employer who has only one workplace within this Commonwealth shall form a single workplace safety committee at that workplace within this Commonwealth for the purpose of certification.

(b) An applicant-employer who has more than one workplace within this Commonwealth may form either a single, centralized workplace safety committee representing each of its workplaces within this Commonwealth or separate and individual safety committees at each workplace within this Commonwealth for the purpose of certification.

(c) The committee shall be composed of at least an equal number of applicant-employer and employe representatives unless otherwise agreed upon by both parties. A satisfactory, written explanation to the Bureau is

required when a committee is not composed of an equal number of applicant-employer and employee-representatives and a majority of applicant-employer representatives exists. The explanation shall be signed by one employer and one employee committee representative.

(d) Employee-representatives of the committees shall:

(1) Be permitted to take reasonable time from work to perform committee duties, without loss of pay or benefits.

(2) Serve a continuous term of 1 year. Member rotation should be structured so that there is always at least a core group of experienced members serving on the committee at any given time. Records of member rotation shall be maintained by the applicant-employer for 5 years from the date of application submission.

§ 129.1005. Committee responsibilities.

(a) To be granted certification, the workplace safety committees shall have responsibilities including:

(1) Representing the accident and illness prevention concerns of employees at every applicant-employer workplace.

(2) Reviewing the applicant-employer's hazard detection and accident and illness prevention program and making written recommendations.

(3) Establishing procedures for periodic workplace inspections by the safety committees for the purpose of locating and identifying health and safety hazards. The locations and identity of hazards shall be documented in writing, and the committees shall make recommendations to the applicant-employer regarding correction of the hazards.

(4) Conducting timely review of incidents resulting in work-related deaths, injuries and illnesses and of complaints regarding health and safety hazards made by committee members or other employees.

(5) Conducting follow-up evaluations of newly implemented health and safety equipment or health and safety procedures to assess their effectiveness.

(6) Establishing a system to allow the committee members to obtain safety-related suggestions, reports of hazards or other information directly from persons involved in the operation of the workplace.

(b) A quorum of committee members shall meet at least monthly.

(c) The committees shall additionally:

(1) Develop operating procedures, such as rules or bylaws, prescribing the committees' duties.

(2) Develop and maintain membership lists.

(3) Develop a written agenda for each committee meeting.

(4) Maintain committee meeting attendance lists.

(5) Take and maintain minutes of each committee meeting which the applicant-employer shall review and maintain for 5 years for inspection by the Bureau, at the Bureau's discretion. Copies of minutes shall be posted or made available for all employees and shall be sent to each committee member.

(6) Ensure that the reports, evaluations and recommendations of the committees become part of the minutes of the meeting which shall include:

(i) Inspection reports.

(ii) Reports on specific hazards and corrective measures taken.

(iii) Reports on workplace injuries or illnesses.

(iv) Management responses to committees reports.

(7) Set a reasonable time limit for the applicant-employer to respond in writing to all safety committees recommendations.

(8) Make decisions by majority vote.

§ 129.1006. Committee member training.

(a) The applicant-employer shall, itself or through its insurer, provide adequate, annual training programs for each committee member listed in the application.

(b) Annually required committee member training shall at a minimum address:

(1) Hazard detection and inspection.

(2) Accident and illness prevention and investigation (including substance abuse awareness and prevention training), safety committee structure and operation.

(3) Other health and safety concerns specific to the business of the applicant-employer.

(c) Prior to submitting an application to the Bureau and annually thereafter, all committee members shall receive training in the topics listed in subsection (b) from individuals who possess the qualifications of accident and illness prevention services providers as defined in Subchapter E (relating to accident and illness prevention services providers qualification standards) or who have been recognized by the Bureau as qualified trainers.

(d) Applicant employers are responsible for providing verification of trainer qualifications to the Bureau and supplying, as necessary, documentation supporting individual trainer qualifications.

(e) The applicant-employer shall maintain written records of safety committee training including:

(1) The names of committee members trained.

(2) The dates of training.

(3) The training time period.

(4) The training methodology.

(5) The names and credentials of personnel conducting the training.

(6) The names of training organizations sponsoring training, if applicable.

(7) The training location.

(8) The training topics.

(f) These training records shall be retained for 3 calendar years from the date the training was conducted.

§ 129.1007. Certification.

(a) If the Bureau determines that the applicant-employer's committees meets the requirements, it will send a letter of certification approval to the applicant-employer. Certification approval is granted to an applicant-employer who, by signing the acknowledgements and agreements page of the application agrees to continue to operate the workplace safety committee according to all requirements upon which initial certification is based. Committees may not be disbanded by the employer except for valid business reasons.

(b) The insured applicant-employer may submit a copy of the letter of certification approval to its insurer to receive an initial 5% reduction of its workers' compensation premium. The reduction will be effective upon the commencement of the policy renewal period next following the date of Bureau certification. An applicant-employer who is a member of a group self-insurance fund established to grant a 5% reduction in annual member contributions, shall submit a copy of the letter of certification to its fund administrator to receive the initial 5% contribution reduction. The reduction will be effective at the commencement of the next group self-insurance fund year following certification.

(c) The Bureau will notify the Pennsylvania Compensation Rating Bureau of approved insured applicant-employers.

(d) If an application is disapproved, the applicant-employer will receive a letter listing specific reasons for disapproval. The applicant-employer may resubmit a corrected application for reconsideration prior to the renewal of its workers' compensation policy, self-insurance renewal year, or group self-insurance fund year. The applicant-employer may challenge the disapproval determination under Subchapter G (relating to hearings).

§ 129.1008. Certification renewal affidavit.

(a) After initial certification, the applicant-employer may, using form LIBC-372R, "Certification Renewal Affidavit of Workplace Safety Committee," apply to the Bureau for renewal of its initial safety committee certification. Affidavits will be generated by the Bureau and provided to eligible applicant-employers for submission. Affidavits shall be submitted to the Bureau between 90 and 15 calendar days prior to the annual renewal of a workers' compensation policy, self-insurance renewal year, or group self-insurance fund year. Certification may be renewed for a total of 4 remaining years after the initial certification.

(b) If an applicant-employer has established additional safety committees which have not previously been certified, an "Application for Certification of Workplace Safety Committee" shall be completed and approved before certification renewal can be granted. Certification renewal approval is granted to an applicant-employer who, by signing the acknowledgements and agreements page of the affidavit, attests that the certified workplace safety committee has continued to operate according to the requirements upon which initial certification approval was based. Committees will not be disbanded by the employer except for valid business reasons.

(c) If the Bureau determines that the applicant-employer has met certification renewal requirements, it will send a letter of certification renewal approval to the applicant-employer.

(d) An insured applicant-employer shall submit a copy of the letter of certification renewal to its insurer to receive a 5% premium reduction of its workers' compensation insurance premium at the next renewal premium period following the date of Bureau certification renewal. An applicant-employer who is a member of a group self-insurance fund established to grant a 5% reduction in annual member contributions, shall submit a copy of the letter of certification renewal approval to its fund administrator to receive the renewal 5% contribution reduction.

The reduction will be effective at the commencement of the next group self-insurance fund year following certification renewal.

(e) The Bureau will notify the Pennsylvania Compensation Rating Bureau of all approved insured applicant-employers.

(f) If a renewal is disapproved, the applicant-employer will receive a letter listing specific reasons for disapproval. The applicant-employer may resubmit a corrected renewal affidavit for reconsideration prior to the renewal of its workers' compensation policy, self-insurance renewal year, or group self-insurance fund year. The applicant-employer may challenge the disapproval under Subchapter G (relating to hearings).

§ 129.1009. Information verification.

The Bureau reserves the right to verify the information submitted by application or affidavit including pertinent supporting documentation.

§ 129.1010. Recordkeeping requirements.

The applicant-employer shall maintain copies of the required documents of the functioning committee for at least 3 years.

§ 129.1011. Contesting final determinations.

A party wishing to contest a final disapproval or rejection determination shall do so under Subchapter G (relating to hearings).

Subchapter G. HEARINGS

Sec.

129.1301. Purpose.

129.1302. Request for hearing.

129.1303. Hearing process.

§ 129.1301. Purpose.

This subchapter sets forth the process to be followed for hearings related to appeals of final determinations under this chapter.

§ 129.1302. Request for hearing.

(a) A party contesting a final determination shall file an original and two copies of a written request for a hearing to the Director within 30 calendar days of the date of the determination. The hearing request shall be made to the Bureau at the address listed on the determination.

(b) A proof of service indicating the date and form of service shall be provided to the Bureau at the time the request for hearing is filed.

§ 129.1303. Hearing process.

(a) The Director will assign requests for hearings to an impartial hearing officer who will schedule a de novo hearing. The hearing officer will provide notice to parties of the hearing date, time and place.

(b) The hearing will be conducted in a manner to provide the parties with an opportunity to be heard. The hearing officer will not be bound by strict rules of evidence.

(c) Testimony will be recorded and a full record kept of the proceeding.

(d) Following the close of the record, the hearing officer will issue a written final decision and order.

(e) Any party to the hearing aggrieved by a decision rendered under subsection (d), may within 30 days, appeal the decision to the Commonwealth Court. The hearing officer's determination will include a notification to the parties of their appeal rights.

(Editor's Note: Chapter 143 found at 34 Pa. Code pgs. 143-1 to 143-26, serial pgs. (200493) to (200516) and (235603) to (235604) is proposed to be deleted in its entirety.)

Chapter 143. (Reserved)

§ 143.1. (Reserved).

§ 143.2. (Reserved).

§§ 143.101—143.118. (Reserved).

§ 143.401. (Reserved).

§ 143.411—143.414. (Reserved).

§§ 143.451—143.458. (Reserved).

§ 143.701—143.703. (Reserved).

§ 143.1001—143.1009. (Reserved).

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