

RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY

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), Bureau of Workers' Compensation (Bureau), by this order, adopts amendments to clarify and provide detailed guidance for the uniform application of the health and safety provisions of the Workers' Compensation Act (act) (77 P. S. §§ 1-1041.4 and 2501-2626). These amendments, to read as set forth in Annex A, are to be added as Chapter 129 (relating to workers' compensation health and safety). Chapter 129 will further clarify and expand upon the previous interpretations of the act of July 2, 1993 (P. L. 190, No. 44) (Act 44) provided in the proposed rulemaking published at 29 Pa.B. 3161 (June 19, 1999). 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 with the addition of Chapter 129. This notice also includes the Department's interpretation of the provision of the act of June 24, 1996 (P. L. 350, No. 57) (Act 57) extending the one-time 5% discount for safety committee certification to a total of 5 years.

In addition, the Department is amending language in § 123.202 (relating to qualifications) to delete the requirement that an expert, who qualifies under § 123.202(4), shall 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 this 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 amends §§ 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 intends to replace premium and manual premium with contributions, which is a defined term under § 125.132 (relating to definitions). This change will have no practical effect on the application of the sections to existing or proposed group self-insurance funds.

Statutory Authority

These amendments are adopted under the authority provided in sections 401.1 and 435 of the act (77 P. S.

§§ 710 and 991), which provides that the Department will adopt regulations reasonably calculated to explain and enforce provisions of the act. These amendments are adopted under the additional authority of sections 1001 and 1002 of the act (77 P. S. §§ 1038.1 and 1038.2), which 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; requirements 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 at 23 Pa.B. 4185 (August 28, 1993). 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.

The Department published a statement of policy at 25 Pa.B. 3943 (September 16, 1995). 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 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 (77 P. S. § 1038.2) 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, requirements for accident and illness prevention services providers, 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 the Department, but also representatives of the National Safety Council, 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 requirements 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 list of credentials 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 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 include 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. At those meetings, the Bureau members described the Department's interpretation of the health and safety provisions and processes that have been implemented to effect them. This participation has also provided an important vehicle for affected parties to comment and input.

At 29 Pa.B. 3161 (June 19, 1999), the Department published the notice of proposed rulemaking, again inviting all interested parties to provide written comments to the Department regarding the Department's interpretation of Acts 44 and 57. As a result, the Department received comments from the following groups and individuals: Dr. Jasen M. Walker, CEC Associates, Inc.; John P. Halvorsen, Insurance Services Office, Inc.; George Ellis, Pennsylvania Coal Association; Peter N. Calcara, Professional Insurance Agents Association of Pennsylvania, Maryland, and Delaware; J. A. Hold and P. W. Nicholson, Consol, Inc.; John H. Cheffer, Travelers Property and Casualty; Daniel R. Tunnell, Pennsylvania Gas Association; Steven A. Bennett, American Insurance Association; and Samuel R. Marshall, The Insurance Federation of Pennsylvania. The Department also received written comments from the Independent Regulatory Review Commission (IRRC), by means of a letter dated August 19, 1999.

This notice of final-form rulemaking supplants and further clarifies and expands upon the previous interpretation of Act 44 and Act 57 health and safety provisions provided in the notice of proposed rulemaking. In response to comments received, some changes have been made to the previously published interpretation.

Purpose

The purpose of these 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 of the act (77 P. S. §§ 1038.1 and 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) of the act 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, so that all parties will have a clear understanding of their rights and duties under the health and safety provisions of the act. These 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 shall comply with under Chapter 7E of the act (77 P. S. § 1038.1) and reporting requirements relating to the programs or services. These amendments also describe the acceptable credentials and required experience for accident and illness prevention services providers. Finally, these

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 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. The staff is needed to review, process and evaluate applications and reports and to conduct onsite audits of accident and illness prevention programs. These administrative costs, however, are a result of the statute and not these 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.

Responses to Comments

The following addresses the common areas of concerns found in the comments received from the public and IRRC.

One commentator, CEC Associates Incorporated, objected to the proposed rulemaking's deleting § 123.202(4)(vi). Nonetheless, the Department believes that it is still necessary to delete § 123.202(4)(vi) because "vocational testing and assessment," as that term is used in the industry, requires formal education and training, a qualification that is inconsistent with the regulations' defining a limited "grandfathered" class of vocational evaluators. Therefore, the clause remains deleted in the final-form regulations.

Section 129.2 (relating to definitions) of the proposed rulemaking contains the definitions for various terms and phrases which are incorporated throughout these regulations. At the request of IRRC and various commentators, the following definitions have been either amended, added or deleted to increase clarity. The rating determination of "adequate" has been defined relative to the requirements that shall be met to achieve this evaluation.

The definition of "audit" has been modified to allow for the submission of documentation required by other governmental agencies to evidence compliance. The phrase "effectiveness measures" has been amended to include specific formulas which may be used to monitor programs and services. The definition of "need" has been deleted. The definitions of "workplace," "recommendations" and "training program" have been amended for clarity. Definitions of the terms "credential," "suggestions" and "worksite" have been added to increase clarity. The definition of "program evaluation methods" has been modified for clarity and renamed as "evaluation methods." The terms "program coordinator" and "emergency action plans" have been included for additional clarity.

Section 129.102(1) of the proposed rulemaking describes policyholder notification requirements for insurers. Several commentators have suggested that because insurer contact personnel frequently change, the insurer's department should also be listed as a point of contact on the notice. The Department agrees, and has amended the subsection to require the name of a contact person or department.

Section 129.102(2) of the proposed rulemaking states that an insurer must have the capacity to maintain or provide adequate services as required by the nature of the carrier's business or policyholders' operations. Several commentators have advised the Department that the substitution and definition of the term "capacity" would more accurately interpret the obligation of the insurer and that such capacity should only apply to policyholders who request services. Although the Department is in general agreement with this interpretation and has made appropriate wording changes, the obligation to maintain or provide accident and illness prevention services is interpreted by the Department as requiring proactive action by insurers in providing notification of the availability of accident and illness prevention services and in the notice, review, analysis and proposal of preventive corrective actions under a policyholder's request under § 129.103.

Section 129.102(3)(ii)(A) of the proposed rulemaking describes required insurer actions when imminent danger situations or significant program deficiencies are identified. A number of commentators and IRRC have stated that the phrase "appropriate follow-up" is ambiguous as used in this subsection. The Department has amended the subsection to read that the carrier shall "propose further corrective actions if necessary."

Section 129.102(3)(ii)(D) and (E) of the proposed rulemaking describes required industrial health and hygiene services. Several commentators have stated that this section should be deleted as it might be interpreted to require that insurers maintain specialized staff to directly provide all the services to policyholders. Since both of these services are specifically mentioned in the Article X provisions of the act, the language cannot be deleted. The Department's intent, however, is to permit insurers to identify policyholder needs for these services and to either directly provide or recommend them given their specialized nature. Language has been modified accordingly.

Sections 129.102 (3)(ii)(D) and (E), 129.402(a)(6) and (7) and 129.457(3) and (4) of the proposed rulemaking were drafted to describe the required industrial hygiene or health services to be provided by an insurer, self-insured employer or group self-insurance fund. Several commentators and IRRC have suggested that the words "appropriate" and "needs" are ambiguous. The Department

agrees and has modified wording to reflect that policyholder needs are to be determined by the insurer.

Section 129.102(3)(ii)(H) of the proposed rulemaking allows for review and recommendation of planned or newly introduced industrial materials processes, equipment, layouts and techniques. Several commentators have expressed concern that because of the potential variety of new processes and equipment, insurers would face unnecessary and burdensome expenses to employ adequate staff to effectively conduct assessments of all specific hazards. In keeping with the Department's original intent, language has been modified to describe the requirement as providing consultations to policyholders concerning hazard abatement programs and techniques associated with those introductions.

Sections 129.104(b), 129.403(b) and 129.453(b) (relating to insurer's accident and illness prevention services providers requirements; individual self-insured employer's accident and illness prevention services providers requirements; and group self-insurance fund accident and illness prevention services providers requirements) of the proposed rulemaking state that insurers, individual self-insured employers and group self-insurance funds have proof that the qualifications for accident and illness prevention providers have been met. The American Insurance Association has expressed concern that this language, as drafted, directed carriers to provide proof annually in conjunction with required yearly reports. The subsection has been rewritten to specify that proof of qualification shall be provided only upon an onsite inspection and maintained for specified record retention periods.

Section 129.106 (relating to reporting requirements licensed insurers) of the proposed rulemaking set forth the due date for submission of the annual report by each carrier. Several commentators have requested that the March 1 date be changed to June 1 to allow additional time for the compilation of report data. The Department feels that this is a reasonable request and has modified language accordingly. Additionally, commentators have voiced that the report information should be limited to information concerning services "requested" by policyholders. However, it is the Department's interpretation that the determination of the "adequacy" of the accident and illness prevention services and programs also requires an examination of not only policyholder requests, but proactive insurer actions to address client exposures and to recommend or implement corrective actions. Therefore, the Department believes a revision to the language is not warranted.

Sections 129.106, 129.404 and 129.455 of the proposed rulemaking stated that the insurer, self-insurer and group self-insurance fund shall provide the Bureau with documentation concerning accident and illness prevention services on forms supplied by the Bureau. Several commentators and IRRC inquired into the ability of the insurer to use other similar types of governmental regulatory documentation in lieu of the Bureau's forms. As a result, the Department has changed the regulatory language to include this type of documentation as acceptable to meet the requirements of Article X of the act (77 P. S. § 1038.1).

Sections 129.106, 129.404, 129.455, 129.108, 129.406 and 129.458 of the proposed rulemaking listed reporting and recordkeeping requirements. IRRC commented that the current language is inconsistent with the requirements enumerated in section 1001(e)(1), (2) and (5) of the act. The Department has reconciled the language and requirements of these sections.

Sections 129.109, 129.407 and 129.459 (relating to periodic audits of insurer's accident and illness prevention services) of the proposed rulemaking stated that the Bureau may audit the insurer, self-insured employer or group self-insurance fund's accident and illness prevention programs or services "at least once every 2 years." IRRC has requested clarification as to when an audit would be initiated and that the written notice of the audit include the reasons for the audit. Several commentators have requested that the language "at least once every 2 years" be eliminated. The Department has amended the language to better describe when an audit would be triggered and to specify that the written notice of the audit will include the reasons for the audit. The language of the act, however, specifically permits inspections at least once every 2 years, and this language has been retained rather than eliminated as some commentators have suggested.

Sections 129.110, 129.408 and 129.460 (relating to preaudit exchange of information; periodic audits of individual self-insured employer's accident and illness prevention program; and preaudit exchange of information) of the proposed rulemaking provided for the preaudit exchange of information. IRRC has commented on three areas of the sections: first, that the necessity for the submission of 1 to 3 years of Insurer's Annual Report of Accident and Illness Prevention Services (AIPS) or Annual Report of Accident and Illness Prevention Program Status (AIPPS) by Individual Self-Insured Employer reports makes the preaudit exchange of the same material duplicative; second, the requirement that insurers submit a list of current "employers/policyholders" that have certified safety committees is unnecessary and duplicative since the Department already has access to this information; and finally, the phrase "in a timely manner" would benefit from clarification. With respect to the initial point, the Department has inserted language explaining that the need for submittal of 3 years of AIPS or AIPPS reports only arises when an audit has been initiated and no annual reports have previously been filed. In addition, the Department has narrowed the requirement that insurers submit the list of current employers/policyholders that have a certified safety committee so that the list will be far less burdensome on the carrier, and only need to include those employers/policyholders that "have reported to the carrier" that Department certification has been granted. The Department believes that the party most able to compile this information is the insurer, as policyholders frequently change insurers and the Department does not necessarily receive notification of these changes. The Department does concur with IRRC's assessment that the phrase "in a timely manner" is vague, and has deleted this language, and will instead rely on the language defining required filing time periods.

Sections 129.112, 129.410 and 129.462 (relating to written report of audit; site of audit; and written report of audit) of the proposed rulemaking explained the form and notification of a written report of audit. IRRC commented that there was no mention of a time period when the Department would issue its rating determination. The Department believes that since these regulations are not intended to regulate the Department itself, there is no need for a fixed time frame to be included. Further, IRRC noted that the phrase "satisfactory proof" is vague. The confusion regarding this language has led the Department to amend the regulation, substituting the phrase "written documentation" for "satisfactory proof."

Sections 129.112, 129.410, 129.462, 129.113, 129.411 and 129.463 of the proposed rulemaking concerned the

assignment of rating determinations based upon the written report of audit and reports of progress on correcting deficiencies. IRRRC requested that the regulations be amended to give more precise guidance to insurers as to the criteria, standards or requirements to be used to determine compliance. The Department has amended the regulations to more clearly describe how it will determine and assign adequacy review process.

Section 129.113 (relating to plan of correction/reports of progress on correcting deficiencies) of the proposed rulemaking provided that, within 60 days after the issuance of the audit report, an insurer will either comply with all report recommendations and provide written evidence of compliance or, for deficiencies requiring more than 60 days to correct, shall file a plan of correction acceptable to the Department and subsequently file monthly reports of progress. IRRRC has requested that the requirements and sequence of these time periods be clarified. The Department agrees, and therefore has modified language accordingly, further clarifying when final determinations will be assigned during these periods and defining the circumstances which may initiate an audit during the correction period.

Sections 129.114, 129.412 and 129.464 (relating to contesting final determinations; plan of correction/reports of progress on correcting deficiencies; and contesting final determinations), as proposed, detailed the ramifications of an employer's failure to maintain or provide adequate services. Travelers Property Casualty indicated, and the Department concurs, that the reference to the act in these sections are inaccurate and the provisions dealing with penalties are unclear. Accordingly, the Department has incorporated language to correct the references to the *Pennsylvania Code* and clarified the authority and process for imposition of monetary penalties.

Section 129.702 of the proposed rulemaking used the term "certification" to reference qualifications acceptable to the Department for accident and illness prevention services providers. IRRRC correctly pointed out that the term certification, as used in Subchapter F (relating to workplace safety committees) in reference to the evaluation of safety committees, is in conflict with its current usage in this subsection. As such, the Department has substituted the term "credential" when referencing provider qualifications and uses the term "certification" exclusively in reference to safety committees.

Section 129.702 of the proposed rulemaking referenced the credentials for accident and illness services providers established by the Department as required by section 1001(a) and (b) of the act. Several commentators remarked that the qualification standards as proposed should be deleted. The Department disagrees with this position since the act requires the Department to specify levels of qualification.

IRRC also questioned whether the "in service" designation, as described in § 129.702, equated to the apprenticeship program described in the previously published statement of policy. At IRRRC's suggestion, the language concerning in-service status has been clarified to indicate that a provider who does not possess recognized Department qualification has 5 years to meet the necessary qualification criteria.

Further, IRRRC questioned why subsection (e) of § 129.702 of the proposed rulemaking required that at least 60% of a service provider's job activities be devoted to accident and illness prevention services to meet the 2-year experience requirement for qualification rather

than 50% as stated in the statement of policy. The Department's use of 50% in the statement of policy was in error.

Finally, § 129.702(g) of the proposed rulemaking described the 5-year qualification period for providers designated as "in-service." IRRRC questioned whether this provision applied to both existing and newly hired employees. The subsection has been amended to reference any provider whose services were utilized during a given reporting period without regard to employment status.

Section 129.1003 (relating to minimum eligibility requirements) of the proposed rulemaking concerned the minimum eligibility requirements for workplace safety committees. IRRRC requested clarification of the phrase "reasonably represent all." The Department has amended the section to state that all primary functions of an employer must be represented by committee membership.

Section 129.1004(d)(2) (relating to committee formation and membership) of the proposed rulemaking provided that "[m]ember rotation should be structured so that there is always at least a core group of experienced members." IRRRC recommended that, in the interest of clarity, this section be revised to state that "workplace safety committees shall establish procedures that retain a core group of experienced members serving on the committee at any given time." The Department concurs with this suggestion and adopted this language in the final-form regulations.

IRRC also asked for clarity in the language of the subsection dealing with terms of committee members and associated recordkeeping requirements. In response, the Department has amended this provision to specify that a committee member's term commences upon attending the first committee meeting and that records shall be kept for 5 years.

Section 129.1005 (relating to committee responsibilities) of the proposed rulemaking described the workplace safety committee responsibilities. IRRRC commented that the terms "timely" as used in subsection (a)(4) relating to the review of incidents and "reasonable" as used in reference to time limits for response to safety committee recommendations under subsection (b)(7) were ambiguous. The Department concurs, and has eliminated the terms.

Section 129.1010 (relating to recordkeeping requirements) of the proposed rulemaking required an applicant-employer to keep copies of the "required documents" of the workplace safety committee for a minimum of 3 years. IRRRC noted the inconsistency with this retention period and the stated retention for other committee records including those for member training. Accordingly, the Department has revised the retention time periods to be consistent at 5 years. At IRRRC's suggestion, the Department has also clarified the documentation to be retained which has been limited to information necessary to make determinations of adequacy or inadequacy.

Section 129.1301 (relating to purpose) of the proposed rulemaking provided the subchapter's purpose. At IRRRC's suggestion, the Department has revised the section to include more expansive definitions of the types of "final determinations" which are subject to appeal.

Section 129.1303 (relating to hearing process) of the proposed rulemaking described the hearing process for situations where a party contests a final determination. IRRRC has posited that the section, as written, failed to completely outline the hearing process. In response, the Department has clarified the language as to the process

and appointment of a hearing officer by the Director and the resultant notifications. Additionally, a new subsection has been added referencing 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Several commentators questioned the additional recordkeeping and costs associated with the implementation of these regulations. Although it is realized that some additional administration may be required, the Department has sought to minimize this burden to the extent possible. The Department's acceptance of documentation required by other state and Federal agencies as evidence of compliance with these regulations is one example of how the Department has attempted to minimize the burdens placed on affected parties.

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 requirements established by the Department; determination of eligibility for safety committee certification and certification renewal and resulting 5% premium discounts; and 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 requirements. 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 credentials and experience of individuals used to provide services. Form LIBC-210I, Insurer's Annual Report of Accident and Illness Prevention Services, 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 adequate accident and illness prevention program as a prerequisite for retention of self-insured status. Section 1001(b) of the act 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 requirements 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 apply 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 of the act 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 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 amendments are effective immediately upon publication in the *Pennsylvania Bulletin*.

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 the notice of proposed rulemaking published at 29 Pa.B. 3161 to IRRC and to the Chairpersons of the House Labor Relations Committee and the Senate Committee on Labor and Industry for review and comment. IRRC and the Committees were provided with copies of comments received during the public comment period, as well as other documents when requested.

In preparing these final-form regulations, the Department has considered all comments from IRRC, stakeholders and the public. These final-form regulations were deemed approved by the House and Senate Committees on April 13, 2001. IRRC met on April 19, 2001, and approved the amendments in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Contact Person

The contact person is Len E. Negley, Chief, Health and Safety Division, Bureau of Workers' Compensation, Department of Labor and Industry, (717) 772-1917, 1171 South Cameron Street, Room 324, Harrisburg, PA 17104-2501.

Findings

The Department finds that:

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

(2) The amendment of the regulations of the Department in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Department, 34 Pa. Code, are amended by adding §§ 129.1, 129.2, 129.101—129.114, 129.401—129.413, 129.451—129.464, 129.701—129.705, 129.1001—129.1011, 129.1301—129.1303 and 129.1601, 129.1602; and by amending §§ 123.202, 125.133 and 125.155; and by deleting §§ 143.1, 143.2, 143.101—143.118, 143.401, 143.411—143.414, 143.451—143.458, 143.701—143.703 and 143.1001—143.1009, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

JOHNNY J. BUTLER,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 2444 (May 5, 2001).)

Fiscal Note: Fiscal Note 12-54 remains valid for the final adoption of the subject regulations.

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

- (i) Job seeking skills.
- (ii) Job development.
- (iii) Job analysis.
- (iv) Career exploration.
- (v) Placement of individuals with disabilities.

CHAPTER 125. WORKERS' COMPENSATION SELF-INSURANCE

Subchapter B. GROUP SELF-INSURANCE

§ 125.133. Application.

* * * * *

(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 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 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).

* * * * *

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 REQUIREMENTS
- F. WORKPLACE SAFETY COMMITTEES
- G. HEARINGS
- H. ORDER TO SHOW CAUSE/PENALTIES

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 the context clearly indicates otherwise:

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 or persons providing accident and illness prevention services for an insurer, individual self-insured employer or group self-insurance fund who meets the requirements in § 129.702 (relating to accident and illness prevention services providers credentials and experience).

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

Act—The Workers' Compensation Act (77 P. S. §§ 1-1041.4 and 2501-2626).

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).

Adequate—A Bureau of Workers' Compensation final determination that the insurer, individual self-insured employer or group self-insurance fund has fulfilled the program and service requirements as stated in this chapter.

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 documentation or other evidence relating to the adequacy of accident and illness prevention services or programs as 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 employee 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 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 requirement) under contract with an insurer, individual self-insured employer or group self-insurance fund for the purpose of maintaining or providing accident and illness prevention services and programs as required under the act.

Credential—A designation in the health and safety field recognized by the Department.

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

Director—The Director of the Bureau.

Effectiveness measures—Any one of the various statistical 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 such as Occupational Health and Safety Administration (OSHA)/United States Department of Labor Bureau of Labor Statistics (BLS) incidence rate comparison, loss ratio or experience modification factor.

Emergency action plans—Plans to be at least annually reviewed by individual self-insured employers and which address the need for immediate action to protect employees due to the occurrence of life-threatening or endangering exposures. Examples of types of plans include: building and site evacuation; hazardous material spill; and urgent employee medical treatment.

Evaluation methods—Periodic reviews of accident and illness prevention services or programs to determine if actual health and safety concerns, experience and exposures are being addressed, and conducted at least annually.

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).

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.

Hazard identification methods—Methods used to conduct hazard identification and for providing proposed corrective actions 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 proposed corrective actions 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 proposed corrective actions designed to control or prevent identified exposures and is directed toward implementing a program of accident and illness prevention services.

In-service status—The classification granted to an accident and illness prevention services provider who does not possess a Bureau-recognized credential under § 129.702.

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

Insurer's initial report of accident and illness prevention services—Form LIBC-211I, *Insurer's Initial Report of Accident and Illness Prevention Services*, which shall be filed with the Insurance Department when an insurer applies for a license to write workers' compensation insurance in this Commonwealth which details accident and illness prevention services to be maintained by or provided to policyholders.

Loss run—A report containing an employer's incurred losses including the following information concerning an employee'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 coordinator—An employee or contracted individual selected by an individual self-insured employer or group self-insurance fund to coordinate the accident and illness prevention program.

Quorum—A majority of permanent workplace safety committee members.

Recommendations—Findings included in an audit report issued by the Bureau which must be satisfactorily implemented and supported by written documentation in order to achieve a final determination of adequacy.

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 Workers' 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.

Self-insured employer's initial report of accident and illness prevention program—A report to be filed with the Bureau when an application for individual self-insurance is submitted which details the accident and illness prevention program to be maintained by the employer.

Suggestions—Findings of an audit or report evaluation issued by the Bureau which would improve accident and illness prevention programs and services but are not mandatory to achieve a final determination of adequacy.

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

Training program—Training which enables employers and employees to enhance knowledge, skills, attitudes and motivations concerning health and safety issues, and requirements relating to operations, processes, materials and specific work environments.

Workplace—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.

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.

Worksite—A temporary location at which full-time or permanent part-time workers perform their job duties for a limited period of time.

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 requirements.
- 129.105. Reporting requirements for applicants for licensure.
- 129.106. Reporting requirements for 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. Plan of correction/reports of progress on correcting deficiencies.
- 129.114. Contesting final 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 Bureau will annually evaluate the following required accident and illness prevention services components 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 5% premium discount available to employers who form a certified workplace safety committee as

described in this chapter. The required elements of the notice include the name, address and telephone number of the contact person or department 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) based upon anticipated policyholder requests for services or based upon an insurer's evaluation of policyholder requirements. 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 requirements).

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

(i) An insurer shall provide accident and illness prevention services to policyholders who request them or based on the insurer's determination of the policyholders' operational requirements. Services shall be provided through an insurer's own or contracted staff who meet the requirements established by the Department in Subchapter E.

(ii) Services include the following:

(A) Surveys to identify existing or potential accident and illness hazards or safety program deficiencies. Surveys may, for example, be in the form of an underwriting risk analysis or an onsite review. If the insurer determines through a survey and analysis of survey results that the hazards or deficiencies are present, it shall propose corrective actions to the policyholder concerning the abatement of hazards or program deficiencies identified in the surveys. If one or more imminent danger situations are identified, the insurer shall inquire as to the corrective actions a policyholder has taken and propose further corrective actions if necessary.

(B) Providing or proposing corrective actions in the area of industrial hygiene services as requested by the policyholder or as determined by the insurer to meet the policyholders' operational requirements, for example, air quality testing.

(C) Providing or proposing corrective actions in the area of industrial health services as requested by the policyholder or as determined by the insurer to meet the policyholders' operational requirements, for example, health screenings or substance abuse awareness and prevention training policies and programs.

(D) Accident and illness prevention training programs which may include training for safety committee members as outlined under Subchapter F (relating to workplace safety committees).

(E) Consultations regarding specific safety and health problems and hazard abatement programs and techniques related to the introduction of new equipment or new materials.

§ 129.103. Obligation of an insured employer/policyholder.

An insured employer/policyholder requesting accident and illness prevention services as mandated by the act

shall 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 requirements.

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

(b) The Bureau may require that the insurer provide documentation or evidence to support that the requirements 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 for applicants for licensure.

(a) As part of their application for a certificate of authority submitted to the Insurance Department, applicants for a license to write workers' compensation insurance shall provide information concerning 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) 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 final determination of adequate or inadequate to the Commissioner.

§ 129.106. Reporting requirements for licensed insurers.

A licensed insurer shall, by June 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 the AIPS report. In addition, documentation required by other governmental regulatory agencies can be used as supporting evidence of accident and illness prevention services. Report information shall be subject to Bureau verification.

§ 129.107. Report findings.

(a) Upon receipt of a report required under § 129.105 (relating to reporting requirements applicants for licensure), the Bureau will review the report data, make a final determination of the adequacy or inadequacy of services and provide notification to the Commissioner and the insurer of its final determination.

(b) Upon receipt of a report required under § 129.106 (relating to requirements for licensed insurers), the Bureau will review the report data and make a final determination of adequacy or an initial determination of inadequacy of services. An inadequate determination may result in an audit of services before a final determination is made. The Bureau will provide notification to the Commissioner and the insurer of its final determination.

§ 129.108. Recordkeeping requirements.

Insurers shall maintain records of accident and illness prevention services by a 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) Reports from site inspections performed.
- (4) Other service reports including proposed corrective actions.
- (5) The dates on which services were provided and the policyholder's responses to proposed corrective actions.
- (6) The results of industrial hygiene and health surveys and consultations.
- (7) Accident and illness prevention training conducted.
- (8) Documentation supporting the funds expended for the delivery of accident and illness prevention services.
- (9) Evidence of the effectiveness and accomplishments of accident and illness prevention services.

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

- (a) The Bureau may audit an insurer's accident and illness prevention services at least once every 2 years.
- (b) The Bureau may audit an insurer's accident and illness prevention services if the insurer fails to file an AIPS by specified time frames or fails to meet the requirements of this subchapter.
- (c) The notice of the audit will include the reasons for audit.
- (d) 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) If not already submitted, 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 description of the type of accident and illness prevention services provided during the last completed calendar year and a list of current insured employers/policyholders specifying name and premium size grouping which: received services; requested but did not receive services; and have reported to the carrier that they have a certified workplace safety committee.
 - (3) The name, address, business telephone number, credentials, experience and status (whether employed or contracted) of each person acting as an accident and illness prevention services provider for the insurer.
 - (b) The Bureau will keep the list of insured employers/policyholders confidential.
 - (c) Within 10-calendar days of receipt of the list of policyholders, the Bureau will notify the insurer of the accounts selected for audit and the 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, the Bureau may cancel the audit, and a final determination of inadequate will be forwarded to the Director. The Director will provide notification to the Commissioner and to the insurer of its final determina-

tion. 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) At the site where the audit will occur, the insurer shall provide the documentation required by § 129.108 (relating to recordkeeping requirements) and any other documentation chosen by the insurer supporting the existence and adequacy of required services.

§ 129.112. Written report of audit.

- (a) After the conclusion of the audit, the Bureau will issue a written report containing its findings. The report will indicate whether the Bureau has issued a final determination of adequate or an initial determination of inadequate with regard to an insurer's accident and illness prevention services.
- (b) The Bureau will notify the insurer of a final determination of adequate.
- (c) The Bureau will provide written notification to the insurer of specific deficiencies and recommendations for corrective action if it assigns an initial determination of inadequate. Within 60-calendar days from the date of the audit report, the insurer shall provide written documentation that it has complied with the Bureau's recommendations. If the insurer believes that it will take more than 60 days to implement the recommendations, it shall file a plan of correction in accordance with § 129.113 (relating to plan of correction/reports of progress on correcting deficiencies). At the end of the 60-calendar day correction period, a final determination of adequate or inadequate will be assigned. The insurer will receive notification of this final determination. The Commissioner will receive notification of final determinations of inadequate.

§ 129.113. Plan of correction/reports of progress on correcting deficiencies.

An insurer shall file a plan of correction to implement audit report recommendations referenced in § 129.112(c) (relating to written report of audit) for any deficiency requiring more than 60 days to correct. The plan shall include a timetable for correction acceptable to the Bureau. Progress reports shall be filed by the insurer detailing corrective actions at the end of each 30-day period of the correction plan period. The Bureau may audit the insurer's accident and illness prevention services if the insurer fails to file progress reports, implement recommendations, or provide acceptable documentation of corrective actions. At the end of the correction plan period, a final determination of adequate or inadequate will be made, and the insurer will be notified of the determination. The Commissioner will be notified of final determinations of inadequate.

§ 129.114. Contesting final determinations.

An insurer may contest a final determination of inadequate 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 requirements.
- 129.404. Reporting requirements for applicants for individual self-insurance status.
- 129.405. Reporting requirements for individual self-insured employers.
- 129.406. Report findings.
- 129.407. Recordkeeping requirements.
- 129.408. Periodic audits of individual self-insured employer's accident and illness prevention program.
- 129.409. Preaudit exchange of information.
- 129.410. Site of audit.
- 129.411. Written report of audit.
- 129.412. Plan of correction/reports of progress on correcting deficiencies.
- 129.413. Contesting final 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 corrective actions for their mitigation.
- (6) Industrial hygiene surveys required by the nature of the individual self-insured employer's workplace and worksite environments, for example, air quality testing.
- (7) Industrial health services required by the nature of the individual self-insured employer's workplace environment, for example, 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 OSHA/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 and worksite environments 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) Other protocols as may be appropriate for the individual self-insured employer's 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 requirements.

(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 requirements in Subchapter E (relating to accident and illness prevention services providers requirement).

(b) The Bureau may require that the individual self-insured employer provide documentation or evidence to support that the requirements 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 for applicants for individual self-insurance status.

(a) As part of its application for individual self-insurance status submitted to the Bureau, an applicant

for individual self-insurance status shall provide the Bureau with detailed information on its accident and illness prevention program as required under § 129.402 (relating to program requirements) using form LIBC-221E, *Initial Report of Accident and Illness Prevention Program*.

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

§ 129.405. Reporting requirements for 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 the AIPPS report, for the last complete fiscal year preceding the date of the renewal application.

(b) In addition, documentation required by other governmental regulatory agencies can be used as supporting evidence of accident and illness prevention programs.

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

§ 129.406. Report findings.

Upon receipt of a report required under § 129.404 (relating to reporting requirements for individual self-insurance status employers), the Bureau will review the report data and make a final determination of adequacy or an initial determination of inadequacy of programs. An inadequate determination may result in an audit of services before a final determination is made. The Bureau will provide notification to the employer of its final determination.

§ 129.407. 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) Number and dates of surveys conducted.
- (2) Proposed corrective actions and their disposition.
- (3) Training programs conducted.
- (4) Consultations held.
- (5) Analyses of accident causes.
- (6) Industrial hygiene services provided.
- (7) Industrial health services provided.
- (8) Qualified service providers utilized to provide program services whether contracted or employed.

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

(a) The Bureau may audit an individual self-insured employer's accident and illness prevention program at least once every 2 years.

(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) The Bureau may audit an individual self-insured employer's accident and illness prevention program if the

individual self-insured employer fails to file an AIPPS by specified time frames or fails to meet the requirements of this subchapter.

(d) The notice of the audit will include the reasons for audit.

(e) 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.

§ 129.409. 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) If not already submitted, 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, credentials, experience 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, the Bureau may cancel the audit, and a final determination of inadequate will be forwarded to the Director. The Director will provide notification of its final determination to the employer and initiate appropriate action regarding continuance of self-insurance status. A final determination of inadequate may be challenged by the individual self-insured employer in accordance with Subchapter G (relating to hearings).

§ 129.410. 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) At the site where the audit will occur, the individual self-insured employer shall provide the documentation required by § 129.406 (relating to report findings) and any other documentation chosen by the employer supporting the existence and adequacy of required program elements.

§ 129.411. Written report of audit.

(a) After the conclusion of the audit, the Bureau will issue a written report containing its findings. The report will indicate whether the Bureau has issued a final determination of adequate or an initial determination of inadequate with regard to an individual self-insured employer's accident and illness prevention program.

(b) The Bureau will notify the individual self-insured employer of a final determination of adequate.

(c) The Bureau will provide written notification to the individual self-insured employer of specific deficiencies and recommendations for corrective action if it assigns an initial determination of inadequate. Within 60 calendar days from the date of the audit report, the individual self-insured employer shall provide written documentation that it has complied with the Bureau's recommendations. If the individual self-insured employer believes that it will take more than 60 days to implement the recommendations, it shall file a plan of correction in accordance with § 129.412 (relating to plan of correction/reports of progress on correcting deficiencies). At the end of the 60 calendar day correction period, a final determination of adequate or inadequate will be assigned. The individual self-insured employer will receive notification of this final determination.

§ 129.412. Plan of correction/reports of progress on correcting deficiencies.

An individual self-insured employer shall file a plan of correction to implement audit report recommendations referenced in § 129.411(c) (relating to written report of audit) for any deficiency requiring more than 60 days to correct. The plan shall include a timetable for correction acceptable to the Bureau. Progress reports shall be filed by the individual self-insured employer detailing corrective actions at the end of each 30-day period of the correction plan period. The Bureau may audit an individual self-insured employer's accident and illness prevention program if an individual self-insured employer fails to file progress reports, implement recommendations or provide acceptable documentation of corrective actions. At the end of the correction plan period, a final determination of adequate or inadequate will be made, and the individual self-insured employer will be notified of the determination.

§ 129.413. Contesting final determinations.

An individual self-insured employer may contest a final determination of inadequate under Subchapter G (relating to hearings).

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

Sec.

129.451.	Purpose.
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129.461.	Site of audit.
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§ 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 employee involvement, which may include establishment of a workplace safety committee including a safety committee as described in Subchapter F (relating to workplace safety committees).
- (6) Employee 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 OSHA/BLS formula to the current, published OSHA/BLS industry-wide 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 and worksite environments 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) Other protocols or standard operating procedures appropriate for members' workplace and 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 requirements.

(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 requirements specified in Subchapter E (relating to accident and illness prevention services providers requirements).

(b) The Bureau may require the group self-insurance fund to provide documentation or evidence to support that the requirements 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 for applicants for group self-insurance fund status.

(a) As part of its application 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 group self-insurance fund members as required under § 129.452 (relating to program 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 for 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 the AIPPS report 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 group self-insurance 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) In addition, documentation required by other governmental regulatory agencies can be used as supporting evidence of accident and illness prevention programs.

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

§ 129.456. Report findings.

(a) Upon receipt of a report required under § 129.454 (relating to reporting requirements applicants for group self-insurance fund status), the Bureau will review the report data and make a final determination of the adequacy or inadequacy of programs and provide notification to the group self-insurance fund applicant.

(b) Upon receipt of a report required under § 129.455 (relating to reporting requirements for group self-

insurance funds), the Bureau will review the report data and make a final determination of adequacy or an initial determination of inadequacy of programs. An inadequate determination may result in an audit of programs before a final determination is made. The Bureau will provide notification to the group self-insurance fund of its final determination.

§ 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. If through a survey and analysis of survey results it is determined that the hazards or deficiencies are present, corrective actions shall be proposed to the group self-insurance fund member concerning the abatement of hazards or program deficiencies identified in the surveys. If one or more imminent danger situations or program deficiencies are identified, the group self-insurance fund shall inquire as to the corrective actions the group self-insurance fund member has taken and propose further corrective actions if necessary.

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

(3) Providing or proposing corrective actions in the area of industrial hygiene services as requested by the group self-insurance fund member or as determined by the group self-insurance fund to meet the group self-insurance fund members' operational requirements, for example, air quality testing.

(4) Providing or proposing corrective actions in the area of industrial health services as requested by the group self-insurance fund member or as determined by the group self-insurance fund to meet the group self-insurance fund members' operational requirements, for example, health screenings or substance abuse awareness and prevention training policies and programs.

(5) Accident and illness prevention training programs which may include training for safety committee members as outlined under Subchapter F (relating to workplace safety committees).

(6) 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 proposed corrective actions.
- (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) Other service reports including proposed corrective actions.
- (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 proposed corrective actions.

(b) Group self-insurance funds shall annually solicit comments from their 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 for the next current fiscal year and 2 preceding consecutive fiscal years.

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

(a) The Bureau may audit a group self-insurance fund's accident and illness prevention program at least once every 2 years.

(b) The Bureau may audit a group self-insurance fund's accident and illness prevention program if the group self-insurance fund fails to file an AIPPS report by specified time frames or meet the requirements of this subchapter.

(c) 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 are used by each of the companies.

(d) The notice of the audit will include the reasons for audit.

(e) 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) If not already submitted, 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 group self-insurance fund members, including the company name, address, telephone number and contact person.

(3) The types of accident and illness prevention program services provided to selected group self-insurance fund members during the last completed group self-insurance fund fiscal year.

(4) The name, address, business telephone number, credentials, experience 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 Bureau will keep the list of group self-insurance fund members confidential.

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

(d) If the information necessary for the audit is not furnished, the Bureau may cancel the audit, and a final determination of inadequate will be forwarded to the Director. The Director will notify the group self-insurance fund administrator of its final determination and initiate appropriate action regarding continuance of group self-insurance fund status. A final determination of inadequate may be challenged by the group self-insurance 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 group self-insurance fund administrator's main office in this Commonwealth unless otherwise agreed by the Bureau and the group self-insurance 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) At the site where the audit will occur, the group self-insurance fund shall provide the documentation required by § 129.458 (relating to recordkeeping requirements) and any other documentation chosen by the group self-insurance fund supporting the existence and adequacy of required program elements.

§ 129.462. Written report of audit.

(a) After the conclusion of the audit, the Bureau will issue a written report containing its findings. The report will indicate whether the Bureau has issued a final determination of adequate or an initial determination of inadequate with regard to a group self-insurance fund's accident and illness prevention program.

(b) The Bureau will notify the group self-insurance fund administrator of a final determination of adequate.

(c) The Bureau will provide written notification to the group self-insurance fund administrator of specific deficiencies and recommendations for corrective action if it assigns an initial determination of inadequate. Within 60-calendar days from the date of the audit report, the group self-insurance fund shall provide written documentation that it has complied with the Bureau's recommendations. If the group self-insurance fund believes that it will take more than 60 days to implement the recommendations, it shall file a plan of correction in accordance with § 129.463 (relating to plan of correction/reports of progress on correcting deficiencies). At the end of the 60-calendar-day correction period, a final determination of adequate or inadequate will be assigned. The group self-insurance fund administrator will receive notification of this final determination.

§ 129.463. Plan of correction/reports of progress on correcting deficiencies.

A group self-insurance fund shall file a plan of correction to implement audit report recommendations referenced in § 129.462(c) (relating to written report of audit) for any deficiency requiring more than 60 days to correct. The plan shall include a timetable for correction acceptable to the Bureau. Monthly progress reports shall be filed by the group self-insurance fund detailing corrective actions at the end of each 30-day period of the correction

plan period. The Bureau may audit a group self-insurance fund's accident and illness prevention program if the group self-insurance fund fails to file progress reports, implement recommendations, or provide acceptable documentation of corrective actions. The group self-insurance fund will be notified of the determinations made by the Bureau.

§ 129.464. Contesting final determinations.

A group self-insurance fund administrator may contest a final determination of inadequate under Subchapter G (relating to hearings).

Subchapter E. ACCIDENT AND ILLNESS PREVENTION SERVICES PROVIDERS REQUIREMENTS

Sec.

- 129.701. Purpose and scope.
- 129.702. Accident and illness prevention services providers requirements.
- 129.703. Proof of accident and illness prevention services providers credentials and experience.
- 129.704. Procedures for obtaining credential recognition.
- 129.705. Contesting denial of credential recognition or recognition as a qualified accident and illness prevention services provider.

§ 129.701. Purpose and scope.

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

§ 129.702. Accident and illness prevention services providers requirements.

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

(b) An individual providing accident and illness prevention services as an employee or contracted accident and illness prevention services provider shall supply annual proof of current credentials and experience to the insurer, individual self-insured employer or group self-insurance fund.

(c) An insurer, individual self-insured employer or group self-insurance fund administrator shall be responsible for reviewing the documentation or evidence to support that the requirements for accident and illness prevention services providers are being met according to the criteria in subsection (d). Verification that requirements have been met by all employed or contracted accident and illness prevention services providers utilized to provide accident and illness prevention services during the reporting period shall be submitted to the Bureau as part of the annual reports.

(d) An individual shall be recognized as an 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 meets one or more of the following requirements:

(1) An educational degree or credential 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 credential recognized by the Bureau from a professional organization in the field of accident and illness prevention and at least 2 years of acceptable experience as set forth in subsection (e).

(3) A credential 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 credentials 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; proposing corrective actions; 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 credentials. Inquiries may be made to the Bureau for current information reflecting additions or deletions to that listing.

(g) An insurer, individual self-insured employer or group self-insurance fund can request in-service status for a services provider utilized to provide services for a given reporting period, but who does not meet Bureau requirements as outlined in subsection (d) and has not been previously granted in-service status. Providers granted in-service status shall have 5 years from the filing date of the annual report in which the request for in-service status was made to meet Bureau requirements as outlined in subsection (d). The activities of accident and illness prevention services providers claiming in-service status shall be directed by a services provider who meets the requirements of this subchapter during the 5-year period in which a recognized credential is being earned and required experience is being obtained. After that 5-year period, an individual who has not met Bureau requirements 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 an accident and illness prevention services provider for purposes of the act.

§ 129.703. Proof of accident and illness prevention services providers credentials and experience.

Proof of an individual's credentials 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 credentials and experience for each accident and illness prevention services provider shall be retained for the most complete current year and 2 preceding consecutive years.

§ 129.704. Procedures for obtaining credential recognition.

The Bureau will accept applications from educational programs, credentialing organizations or specific industry programs requesting recognition of credentials awarded by the organization. Form and content of applications will be specified by the Bureau.

§ 129.705. Contesting denial of credential recognition or recognition as a qualified accident and illness prevention services provider.

(a) An organization may contest a denial of credential recognition under Subchapter G (relating to hearings).

(b) An insurer, individual self-insured employer or group self-insurance fund may contest a denial or recognition as a qualified accident and illness prevention services provider under Subchapter G.

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.
- 129.1005. Committee responsibilities.
- 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 and shall include all information and documentation requested in form LIBC-372.

(b) 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 represent all primary operations of the workplace.

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

(e) Employer-representatives are individuals who, regardless of job title or labor organization affiliation, and based upon an examination of that individual's authority or responsibility, do one or more of the following:

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

(4) Control the employee.

(f) Employee-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 employee-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 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 certification.

(c) The committee shall be composed of at least an equal number of applicant-employer and employee-representatives unless otherwise agreed upon by both parties. An applicant-employer shall provide a satisfactory, written explanation to the Bureau 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) Workplace safety committees shall establish procedures that retain a core group of experienced members to serve on the committee at all times.

(e) 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) Join the committee for a continuous term of 1 year from the date of the first meeting attended. Records of member rotation shall be maintained by the applicant-employer for 5 years from the date of the Bureau's receipt of the application.

§ 129.1005. Committee responsibilities.

(a) To qualify for certification, 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 programs and formulating written proposals.

(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 proposals to the applicant-employer regarding correction of the hazards.

(4) Conducting 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 proposals, 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. 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 proposals 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 committee reports.

(7) 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 meet Bureau requirements for accident and illness prevention services providers as defined in Subchapter E (relating to accident and illness prevention services providers requirements) 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.

§ 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. The Bureau will grant certification approval 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. The employer may not disband committees except for valid business reasons.

(b) The insured applicant-employer shall 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 group self-insurance 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 written notification 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 by the Bureau before certification renewal may 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. Employers will not disband committees 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 group self-insurance 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 affidavit is disapproved, the Bureau will notify the applicant-employer of the 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 may verify the information submitted by application or affidavit including pertinent supporting documentation.

§ 129.1010. Recordkeeping requirements.

Copies of the required documents of the functioning committee as defined in §§ 129.1005(c) and 129.1006(e) (relating to committee responsibilities; and committee member training) shall be retained by the applicant-employer for 5 years.

§ 129.1011. Contesting final determinations.

An applicant-employer may contest a final application or affidavit determination 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 of inadequate as they pertain to accident and illness prevention services and programs, final determinations of approved or disapproved as they pertain to a workplace safety committee initial application or renewal affidavit, denials of recognition as an accident and illness prevention service provider or denials of credential recognition.

§ 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 of the written request for a hearing 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.

(f) Subsections (a)—(e) supplement 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

(g) If, after all appeals have been exhausted, the group self-insurance fund or individual self-insured employer is subject to a final determination that its accident and illness prevention program is inadequate, the group self-insurance fund or individual self-insured employer's certificate to self-insure its obligations under the act shall be void. The group self-insurance fund or individual self-insured employer's failure to properly insure its obligations under the act, through an insurer licensed to provide that coverage in this Commonwealth, within 15 days of the final determination may result in criminal liability under section 305 of the act (77 P. S. § 501).

(h) If, after all appeals have been exhausted, the insurer is subject to a final determination that its accident and illness prevention program is inadequate, the Bureau will notify the Commissioner that the insurer has failed to comply with section 1001(a) of the act (77 P. S. § 1038.1(a)). In that notification, the Bureau may recommend that the insurer's license to write that insurance in this Commonwealth be revoked.

Subchapter H. ORDER TO SHOW CAUSE/PENALTIES

Sec.

129.1601. Purpose.
129.1602. Order to show cause/penalties.

§ 129.1601. Purpose.

This subchapter sets forth the process that the Department may institute to determine whether there has been a violation of the act or related regulations.

§ 129.1602. Order to show cause/penalties.

Whenever the Department has information, through its own investigation or through complaint by any party, upon which it believes that an insurer, individual self-insured employer or group self-insurance fund has failed to establish, maintain or provide accident and illness prevention programs or services, using qualified personnel, and to provide proof of those programs or services required under the act, or upon which it believes that an applicant-employer has misrepresented that it has established or maintained a certified workplace safety committee according to Department criteria, the Department may serve upon the insurer, individual self-insured employer or group self-insurance fund, or applicant-employer an order to show cause why the respondent should not be

found in violation of Chapter 7E of the act (77 P. S. §§ 1038.1 and 1038.2) or related regulations and civil penalties assessed. The order to show cause will set forth the particulars of the alleged violation.

(1) An answer to the order to show cause shall be filed no later than 20 days following the date that the order to show cause is served on the respondent.

(2) The Director of the Bureau will assign the order to show cause to an impartial hearing officer who will schedule a hearing. The hearing officer will provide notice to the parties of the hearing date, time and place.

(3) The hearing will be conducted in a manner as to provide the parties with an opportunity to be heard and, when applicable, will be conducted under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The hearing officer will not be bound by strict rules of evidence.

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

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

(6) In a proceeding under this section, the Department has the initial burden to produce evidence that the respondent has failed to comply with the act or related regulations, the respondent maintains the burden of proving that no violation has occurred.

(7) This section supersedes 1 Pa. Code §§ 35.14 and 35.37 (relating to orders to show cause; and answers to orders to show cause).

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).

[Pa.B. Doc. No. 01-1296. Filed for public inspection July 13, 2001, 9:00 a.m.]
