

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 121]

General Provisions

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), proposes to amend Chapter 121 (relating to general provisions) to read as set forth in Annex A. The proposed rulemaking updates and clarifies the existing regulations that govern the Bureau's administration of the Workers' Compensation Act (act) (77 P. S. §§ 1—1041.4 and 2501—2506) and the procedures utilized by employees, employers and insurers.

Statutory Authority

This rulemaking is proposed under the authority in sections 401.1 and 435(a) of the act (77 P. S. §§ 710 and 991(a)) and section 2205 of The Administrative Code of 1929 (71 P. S. § 565).

Background

Chapter 121 was adopted on March 15, 1974, and has not been revised recently, with a few exceptions. The most recent regulatory amendments followed the act of November 26, 1997 (P. L. 530, No. 57), which amended sections 306.2, 443 and 446 of the act (77 P. S. §§ 517, 999 and 1000.2). The Department then amended §§ 121.1, 121.22 and 121.23 (relating to general; subsequent injury fund; and supersedeas fund). Further, the Department added §§ 121.31—121.35.

On June 11, 2004, a stakeholder meeting was held. Written comments were also received from the following groups: The Insurance Federation of Pennsylvania, Inc. (submitted by Samuel R. Marshall, President and CEO); the Pennsylvania Trial Lawyers Association (submitted by Richard J. Schubert, Esquire, President); and the Workers' Compensation Office of Adjudication (submitted by David Cicola, Director). Actual attendees at the June 11, 2004, meeting were Lawrence Chaban on behalf of the Pennsylvania Trial Lawyers Association and Samuel R. Marshall on behalf of The Insurance Federation of Pennsylvania, Inc. All comments and suggestions have been reviewed and considered.

Purpose

The proposed rulemaking updates and clarifies the practices of the Bureau in the administration of the act and of employees, employers, workers' compensation insurers and other interested parties in their transactions with the Bureau.

Summary of Proposed Regulations

The Department proposes to amend § 121.1 to include definitions of "agreement," "Board," "claimant," "Disease Law" and "employer."

The Department proposes to delete § 121.2 (relating to superseded provisions) because it is unnecessary.

The Department proposes to amend § 121.3 (relating to completion of forms) to better reflect the requirements of filing forms. Also, the Department proposes to add subsection (c) to clarify the Bureau's ability to require electronic

filing and subsection (d) to clarify how to determine a filing date.

The Department proposes to add § 121.3a (relating to computation of time) to explain how a period of time will be computed under Chapter 121.

The Department proposes to add § 121.3b (relating to posting workers' compensation information) to require the posting of general workers' compensation information at an employer's primary places of business and all employment sites. This new mandatory posting is proposed to provide the opportunity to employees to learn basic workers' compensation information that otherwise may be difficult to obtain.

The Department proposes to delete § 121.4 (relating to reproduction of forms) because it currently contains information that is duplicated in § 121.3(a).

The Department proposes to amend § 121.5 (relating to reporting injuries) to correct the requirements regarding filing an Employer's Report of Occupational Injury or Disease, Form LIBC-344. The proposed amendment eliminates language in subsections (b) and (e) regarding disability continuing more than or beyond the entire day, shift or turn. The language in new subsection (c) conforms to section 438 of the act (77 P. S. § 994). Also, the Department proposes to delete unnecessary language discussing variances and to clarify existing language.

The Department proposes to delete § 121.6 (relating to supplemental reports) because the process currently described in this section is obsolete.

The Department proposes to amend § 121.7 (relating to notice of compensation payable) to add requirements for filing a Notice of Temporary Compensation Payable, Form LIBC-501. Also, the Department proposes to amend § 121.7 to require filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501. The Department also proposes to delete language in subsection (b) regarding injuries. To conform to section 406.1 of the act (77 P. S. § 717.1), proposed subsection (a) references "disability." The Department also proposes to allow an employer to file an estimated or amended Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501. Finally, the Department proposes to add subsection (f) to allow an employer to file a Notice of Compensation Payable, Form LIBC-495, in medical only cases.

The Department proposes to amend § 121.8 (relating to agreements) to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336. The Department also proposes to allow an employer to file an estimated or amended Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

The Department proposes to amend § 121.9 (relating to agreements-fatal cases) to clarify that death must occur from the injury, not within 7 days of the injury, to be compensable. Also, the Department proposes to amend § 121.9 to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every Agreement

for Compensation for Death, Form LIBC-338. The Department also proposes to allow an employer to file an estimated or amended Agreement for Compensation for Death, Form LIBC-338.

The Department proposes to delete § 121.10 (relating to supplemental agreements) because supplemental agreements are discussed in proposed § 121.17(b) (relating to termination).

The Department proposes to amend § 121.11 (relating to supplemental agreements—fatal) to clarify the circumstances on which a change of compensation may be based.

The Department proposes to amend § 121.12 (relating to Department review of agreements, and notices of compensation payable) to require an amended version of an agreement, Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, when a correction of errors results in an increase of an employee's wage or compensation. Additionally, the Department proposes to amend § 121.12 to require the filing of a Statement of Wages, Form LIBC-494A or LIBC-494C, with every amended form under this section.

The Department proposes to amend §§ 121.13 and 121.14 (relating to denial of compensation; and weekly wage, occupational disease cases) to clarify existing language.

The Department proposes to amend § 121.15 (relating to compensation payable) to clarify that death must occur from the injury, not within 7 days of the injury, to be compensable.

The Department proposes to amend § 121.16 (relating to statement of compensation paid) to eliminate the requirement of filing an annual Statement of Account of Compensation Paid, Form LIBC-392. The Department proposes, instead, to require the filing of an Annual Claims Status Report, Form LIBC-774, on which an insurer will verify information on its claims. Additionally, the Department proposes to amend § 121.16 to require the filing of a Final Statement of Account of Compensation Paid, Form LIBC-392, immediately after the final payment of compensation.

The Department proposes to amend § 121.17 to explain the procedures for obtaining changes in compensation, including termination, suspension, modification and other changes.

The Department proposes to amend § 121.18 (relating to subrogation procedure) to clarify existing language.

The Department proposes to amend § 121.20 (relating to commutation of compensation) to clarify existing language and to change the reference from a "25-week period" to a "52-week period."

The Department proposes to amend § 121.21 (relating to coal diseases—claim and reimbursement) to require record retention for 3 years, instead of indefinitely. The Department also proposes to amend § 121.21 to clarify existing language.

The Department proposes to amend §§ 121.22 and 121.23 to clarify existing language.

The Department proposes to delete § 121.24 (relating to approval of fees). The existing requirements concerning attorney fees have been more appropriately addressed in Chapter 131 (relating to special rules of administrative

practice and procedure before workers' compensation judges).

The Department proposes to amend § 121.25 (relating to delivery of compensation checks) to allow delivery of a claimant's compensation check to the claimant's attorney if the claimant and employer have executed an Authorization for Alternative Delivery of Compensation Payments, Form LIBC-10, or if a court orders delivery.

The Department proposes to delete § 121.26 (relating to required information for maximum compensation rate increase) because it currently contains language that is duplicative to other language in these regulations.

The Department proposes to amend § 121.27 (relating to violations of the provisions of the act or this chapter) to clarify the process involved with an order to show cause. Additionally, the Department proposes to amend § 121.27 to eliminate language regarding penalty petitions, which will be placed in § 121.27a (relating to Bureau intervention and penalties).

The Department proposes to add § 121.27a to address the Bureau's involvement in penalty petitions.

The Department proposes to delete § 121.28 (relating to petitions designated as a request for supersedeas) because supersedeas requests have been more appropriately addressed in Chapter 131.

The Department proposes to amend § 121.30 (relating to still payable list) to require record retention for 3 years, instead of indefinitely. Additionally, the Department proposes to amend § 121.30 to add language regarding the Bureau's ability to make payments within its discretion to a claimant where the employer has failed to make payments. The Department also proposes to amend § 121.30 to clarify existing language.

The Department proposes to amend §§ 121.31—121.35 to clarify existing language.

Affected Persons

The persons affected by this proposed rulemaking are employees, employers and workers' compensation insurers.

Fiscal Impact

There is no significant fiscal impact associated with this proposed rulemaking.

Reporting, Recordkeeping and Paperwork Requirements

This proposed rulemaking requires the creation of only one new form, the Annual Claims Status Report, Form LIBC-774, and one new posting. However, the annual filing of a Statement of Account of Compensation Paid, Form LIBC-392, has been eliminated. Existing forms require few modifications. Therefore, this proposed rulemaking does not impose any significant additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.

Effective Date

This proposed rulemaking will take effect upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

A sunset date is not appropriate for these regulations. However, the Department will continue to monitor the impact and effectiveness of the regulations.

Contact Person

Interested persons should submit written comments to the proposed rulemaking to John Kupchinsky, Bureau

Director, Bureau of Workers' Compensation, Department of Labor and Industry, Chapter 121 Regulations-Comments, P. O. Box 15121, Harrisburg, PA 17105, jkupchinsk@state.pa.us. Written comments must be received within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 27, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

STEPHEN M. SCHMERIN,
Secretary

Fiscal Note: 12-67. No fiscal impact; (8) recommends adoption.

Annex A

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

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. [General] Definitions.

[(a) Purpose. This chapter has been promulgated in response to the legislative mandate in the act and designed to further the lawful, efficient and speedy administration of the act. The term "employer" as used in this chapter means, when applicable, the insurer thereof and a self-insured employer.

[(b) Definitions.] The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The [Pennsylvania] Workers' Compensation Act (77 P. S. §§ [1—2626] 1—1041.4 and 2501—2506).

Agreement—For purposes of this chapter, an agreement is limited to any of the following:

- (i) Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.**
- (ii) Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337.**
- (iii) Agreement for Compensation for Death, Form LIBC-338.**
- (iv) Supplemental Agreement for Compensation for Death, Form LIBC-339.**

Approved rating organization—One or more organizations situated within this Commonwealth, subject to supervision and to examination by the Insurance Commissioner and approved by the Insurance Commissioner as adequately equipped to perform the functions specified in [Chapter 7B] Article VII of the act (77 P. S. §§ 1035.1—1035.22)[,] on an equitable and impartial basis.

Board—The Workers' Compensation Appeal Board.

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

Claimant—An individual who files a petition for, or otherwise receives, benefits under the act or the Disease Law.

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

Disease Law—The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201—1603).

Earned premium—A direct premium earned as required to be reported to the Insurance Department on Special Schedule "W," under section 655 of The Insurance Company Law of 1921 (40 P. S. § 815). For the purposes of this chapter, direct premium earned may not include:

* * * * *

(ii) Premiums not attributable to coverage under the act or [The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201—1603)] the Disease Law.

* * * * *

Employer—As defined in sections 103 and 401 of the act (77 P. S. §§ 21 and 701), including the insurer and a self-insured employer.

* * * * *

Insured employer—An employer which has chosen to insure its workers' compensation liabilities through a [workers] workers' compensation insurance carrier licensed to do so in this Commonwealth. [The term "employer" when used in this context does not include the insurer thereof.]

* * * * *

Runoff self-insurer—An employer that had been a self-insurer but no longer maintains a current permit to self-insure under section 305 of the act.

* * * * *

§ 121.2. [Superseded provisions] (Reserved).

[Each and every provision promulgated by this Bureau of Workers' Compensation, effective before the date of adoption of this chapter, is superseded as of the effective date of this chapter.]

§ 121.3. [Completion of forms] Filing of forms.

[In most instances, every filing in the claim and petition process shall be on a Departmental form identified with an OI DC designation. Each question or space on every form shall be completed to the best of the party's knowledge. If there is a reason why a question or space cannot be completed, then that reason shall be stated in the space; that is not applicable (n/a), zero, none, and the like. Forms not

properly completed will be returned. Distribution of forms shall be in accordance with instructions on the forms.]

(a) Forms must be in the format prescribed by the Bureau. All references to forms shall mean paper forms or an electronic format prescribed by the Bureau.

(b) The Bureau may return forms that are not properly completed or filed. The Bureau will notify a party if a form is returned. For a form returned for the first time, the Bureau will preserve the filing date if the submitting party files a corrected version of the form within 10 days of the written notice of the return of the form.

(c) The Bureau may require the filing of forms or data through electronic means.

(d) The filing date is the date indicated on the United States Postal Service postmark or postal receipt. If the postmark or postal receipt is absent or unreadable, the filing date is the date of receipt by the Bureau.

§ 121.3a. Computation of time.

Except as otherwise provided by law, in computing a period of time prescribed or allowed by this chapter, the day of the act, event or default after which the designated period of time begins to run may not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

§ 121.3b. Posting workers' compensation information.

(a) An employer shall post workers' compensation information at its primary place of business and at its sites of employment in a prominent and easily accessible place, including, without limitation, areas used for the treatment of injured employees or for the administration of first aid. The workers' compensation information shall be posted in the same location as the notice required by section 305(e) of the act (77 P. S. § 501(e)).

(b) The information shall be entitled "Workers' Compensation Information" and include the following:

(1) The workers' compensation law provides wage loss and medical benefits to employees who cannot work, or who need medical care, because of a work-related injury.

(2) Benefits are required to be paid by your employer when self-insured, or through insurance provided by your employer. Your employer is required to post the name of the company responsible for paying workers' compensation benefits in the same area as this posting.

(3) If your employer has posted a list of six or more health care providers in your work place, you are required to visit one of them for your initial treatment, except for an emergency. Your employer

is required to give you a notice of your rights and responsibilities for using the list of providers.

(4) You should report immediately any injury or work-related illness to your employer.

(5) Your benefits could be delayed or denied if you do not notify your employer immediately.

(6) If your claim is denied, you have the right to request a hearing before a workers' compensation judge.

(7) The Bureau of Workers' Compensation cannot provide legal advice. However, you may contact the Bureau of Workers' Compensation for additional general information at: Bureau of Workers' Compensation, 1171 S. Cameron St., Room 103, Harrisburg, Pennsylvania 17104-2501; telephone number within Pennsylvania (800) 482-2383; telephone number outside of Pennsylvania (717) 772-4447; TTY (800) 362-4228 (for hearing and speech impaired only); Website: www.state.pa.us, PA Keyword: workers comp.

(c) The information must be printed on paper no smaller than 8 1/2 x 11 inches and in font no smaller than 11 point.

§ 121.4. [Reproduction of forms] (Reserved).

[Printing samples of all Departmental forms will be provided upon request. Reproduction of these forms will be in accordance with guidelines accompanying the samples.]

§ 121.5. Reporting injuries to the Bureau.

(a) [Employers' reports of occupational injury or disease shall be filed directly with the Bureau of Occupational Injury and Disease Compensation, Department of Labor and Industry (Department), Harrisburg, Pennsylvania 17120 on Form OIIC-344, Employer's Report of Occupational Injury or Disease or on Form LIBC-375, Employer's Report of Industrial Injury Coal Mining, in accordance with section 438 of the Workers' Compensation Act (77 P. S. § 994).

(b) It shall be mandatory that the employer report to the Department all occupational injury and disease resulting in disability continuing more than the day, shift or turn in which the employe was injured. It shall also be mandatory that the employe receive, as soon as practicable, a copy of this report to be completed at least through item 30.

(c) For purposes of reporting injuries, a variance is granted under section 438 of the act to allow submission of the reports as late as ten days but no sooner than seven days from the date disability begins.

(d)] The [report shall be filed] employer shall file the Employer's Report of Occupational Injury or Disease, Form LIBC-344, with the [Department] Bureau as follows:

* * * * *

(2) [Not before] Within 7 days [but no later than 10 days] after the date disability begins for all other injuries covered by section [435] 438 of the [Workers' Compensation Act] act (77 P. S. § [991] 994).

* * * * *

(b) The employer shall send a copy of this report to the employee simultaneously with filing it with the Bureau.

(c) A disability that requires a report to the Bureau is defined as an injury only resulting in death or disability continuing the entire day, shift or turn, or longer, in which the injury was received.

[(e) Disability for the purposes of reporting to the Bureau shall be defined as loss of time or wages beyond the day, shift or turn in which the injury was received or the loss of a member, loss of use of a member or disfigurement which may qualify for a specific loss payment under section 306(c) of the Workers' Compensation Act (77 P. S. § 513).

(f) Before mailing the Bureau copy, the employer shall separately complete the bottom of that form.]

§ 121.6. [Supplemental reports] (Reserved).

[The Preprinted Computer Card, Form OIDC-493, will be mailed by the Department of Labor and Industry (Department) to the insurer or self-insurer. This will acknowledge receipt by the Department of an employer's report which either indicates lost time beyond the waiting period or is unclear as to the period of disability. It is to be completed and returned to the Department in compliance with the instructions printed thereon.]

§ 121.7. Notice of compensation payable and notice of temporary compensation payable.

(a) [Employer's Notice of Compensation Payable, Form OIDC-495, may be used as indicated under section 407 of the Workers' Compensation Act (77 P. S. § 731).] If an employer files a Notice of Compensation Payable, Form LIBC-495, or a Notice of Temporary Compensation Payable, Form LIBC-501, the employer shall do all of the following simultaneously and no later than 21 days from the date the employer had notice or knowledge of the disability:

(1) Send the Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, to the employee or the employee's dependent.

(2) Pay compensation to the employee or to the employee's dependent.

(3) File the Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, with the Bureau.

(b) [The employer shall submit the notice directly to the employee or the employee's dependent, with a copy to the Department, as soon as practicable, and in no event later than 21 days from the date the employer knew of injuries.

(c) The notice does not require the employee's signature.

(d) If compensation payable under the notice is less than the maximum rate, a statement of wage form, Form OIDC-494, shall accompany the notice showing a calculation of wages, where applicable, and rate of compensation.] A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Notice of

Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501.

(c) To modify a Notice of Temporary Compensation Payable, Form LIBC-501, an employer shall file an amended Notice of Temporary Compensation Payable, Form LIBC-501, with the Bureau during the 90-day temporary compensation payable period. The amended Notice of Temporary Compensation Payable, Form LIBC-501, shall be clearly identified as "Amended." This subsection does not apply upon conversion of the Notice of Temporary Compensation Payable, Form LIBC-501, to a Notice of Compensation Payable, Form LIBC-495.

(d) The employer may file a Notice of Compensation Payable, Form LIBC-495, or a Notice of Temporary Compensation Payable, Form LIBC-501, based upon the employee's estimated wages if the employer has not obtained the wages necessary to properly calculate the employee's compensation payable. The estimated Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, shall be clearly identified as "Estimated."

(e) If the estimated wages or compensation is less than the employee's actual wages, the employer shall amend the estimated Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, upon receipt of the employee's actual wages. Amendments resulting in an increase in the employee's wage or compensation shall be filed with the Bureau under § 121.12 (relating to bureau review of agreements, notices of compensation payable and notices of temporary compensation payable). The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17(b) (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

(f) In medical only cases, when an employee's injury has not resulted in lost time from work, an employer may file a Notice of Compensation Payable, Form LIBC-495.

§ 121.8. Agreements for compensation for disability or permanent injury.

(a) [All Agreements, Form LIBC-336, shall be completed before being signed. If any entry is made after the signature is affixed, the entire agreement may be nullified, at the option of the employee or his dependents.] An Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, shall be completed before being signed by the employer and the employee. If the employer and the employee enter into an agreement, the employer shall do all of the following simultaneously and not later than 21 days from the date the employer had notice or knowledge of the disability:

(1) Send the agreement signed by the employer and the employee to the employee.

(2) Pay compensation to the employee.

(3) File the agreement with the Bureau.

(b) [Wage information need not be shown unless the compensation payable thereon is less than the

maximum allowed.] A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336.

(c) If the employer has not obtained the wages necessary to properly calculate the employee's compensation payable, an Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, based upon the employee's estimated wages may be filed. The estimated Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, shall be clearly identified as "Estimated."

(d) If the estimated wages or compensation is not correct, the employer shall amend the estimated Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, upon receipt of the employee's actual wages. Amendments resulting in an increase in the employee's wage or compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements, notices of compensation payable and notices of temporary compensation payable), and shall be clearly identified as "Amended." The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17 (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

§ 121.9. Agreements [—fatal cases] for compensation for death.

(a) If a compensable injury results in death, an Agreement [Form] for Compensation for Death, Form LIBC-338, shall be executed between [the] an employer and the [dependent,] deceased's dependents or [a] personal representative[; and a copy thereof shall be submitted to the Department of Labor and Industry as outlined under section 407 of the Workers' Compensation Act (77 P.S. § 731)] and filed with the Bureau.

(b) [Wage information shall be shown if the compensation payable thereon for any period is less than the maximum allowed.] A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every Agreement for Compensation for Death, Form LIBC-338.

(c) If death results [within 7 days from the date of] from the injury, compensation payments to the [dependent] dependents for the death benefit shall begin from the date of the employee's death.

(d) [If death results more than 7 days after the injury, compensation payments covering the disability period should be paid as set forth in this chapter, and compensation payments because of death due to the injury shall start from the date of death.] If the employer has not obtained the wages necessary to properly calculate the employee's compensation payable, an Agreement for Compensation for Death, Form LIBC-338, based on the employee's estimated wages may be filed. The estimated Agreement for Compensation for Death, Form LIBC-338, shall be clearly identified as "Estimated."

(e) If the estimated wages or compensation is not correct, the employer shall amend the estimated Agreement for Compensation for Death, Form LIBC-338, on receipt of the employee's actual wages. Amendments resulting in an increase in the employee's wage or dependent's compensation shall be filed with the Bureau under § 121.12 (relating to Bureau review of agreements, notices of compensation payable and notices of temporary compensation payable), and shall be clearly identified as "Amended." The employer shall file a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, under § 121.17 (relating to change in compensation) when there are changes resulting in a decrease in the employee's wage or compensation.

§ 121.10. [Supplemental agreements] (Reserved).

[(a) Supplemental Agreement, Form LIBC-337, shall be completed as necessary before being signed by both employer and claimant. This form shall be used to modify an agreement, notice of compensation payable or award.

(b) If the employee's disability is sufficient to entitle him to the maximum compensation payable under section 306(b) of the Workers' Compensation Act (77 P.S. § 512), no wage information need be given. The agreement shall then recite "employee has returned to work, but suffers a loss of earning power sufficient to entitle him to the maximum compensation payable for partial disability," or words to that effect as the fact of each case warrant.

(c) If the employee has returned to work but is receiving less than the maximum compensation payable under section 306(b) of the act for partial disability, his wages before the injury, as fixed by the agreement or award, and the wages actually received after his return to work, shall be set forth. Payment of partial disability under this paragraph shall be made on the same periodic basis as other compensation is payable, except, and only where necessary, an initial period not to exceed 4 weeks, may be used to determine an average weekly wage for partial disability.]

§ 121.11. Supplemental agreements [—fatal] for compensation for death.

[Where the birth of a posthumous child, the remarriage of a widow or the death of a dependent changes the amount of compensation of the person or person to whom it is payable, but does not extinguish the employer's liability under an award or an agreement, a Supplemental Agreement, Form LIBC-339, should be executed by the surviving parent or guardian. The Department of Labor and Industry will presume that the surviving parent is guardian for purposes of receiving compensation under the act.]

(a) A Supplemental Agreement for Compensation for Death, Form LIBC-339, may be used to change an Agreement for Compensation for Death, Form LIBC-338, or an award. A Supplemental Agreement for Compensation for Death, Form LIBC-339, shall be completed before being signed by an employer and a deceased's dependents or personal representative.

(b) An Agreement for Compensation for Death, Form LIBC-338, may be changed for any of the following reasons:

- (1) Birth of a posthumous child.
- (2) A change in dependent's status, including death.
- (3) A surviving spouse dies, remarries or becomes capable of self-support and any dependent children remain eligible for benefits.
- (c) The Bureau will presume that the surviving parent is guardian for purposes of receiving compensation under the act.

(d) The completed Supplemental Agreement for Compensation for Death, Form LIBC-339, shall be sent to the all of the deceased's dependents or their personal representative and filed with the Bureau.

§ 121.12. [Department] Bureau review of agreements, [and] notices of compensation payable and notices of temporary compensation payable.

[If any facts in a compensation agreement, or in a notice of compensation payable, differ from facts stated in the injury report, and the Department of Labor and Industry (Department) cannot reasonably resolve the difference, the agreement or notice may be returned for correction. Errors in computing wages may be corrected without the execution of new agreements if the correction would result in an increase in the employe's wage or his compensation. This shall be accomplished by the submission of notice to the employe with a copy to the Department.]

(a) Errors in computing wages may be corrected by filing an amended version of the agreement, Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, with the Bureau if correction of errors would increase the employee's wage or compensation. The amended agreement, Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501, shall be clearly identified as "Amended" and may have only the insurer's signature.

(b) A Statement of Wages, Form LIBC-494A, or Statement of Wages, Form LIBC-494C, shall be filed with every amended agreement, Notice of Compensation Payable, Form LIBC-495, or Notice of Temporary Compensation Payable, Form LIBC-501.

§ 121.13. Denial of compensation.

If compensation is controverted, a Notice of [Workmen's] Workers' Compensation Denial, Form LIBC-496, shall be sent to [employe] the employee or dependent and filed with the Bureau, fully stating the grounds upon which the right to compensation is controverted, [with a copy to the Department of Labor and Industry, no later than] within 21 days after notice or knowledge to the employer of [employe's] the employee's disability or death.

§ 121.14. Weekly wage[,] for occupational disease cases.

[The] For cases involving occupational diseases under the act, the weekly wage will be determined in

accordance with section 309 of the [Workers' Compensation Act] act (77 P. S. § 582), and [will] a claimant's compensation rate shall be subject to the maximum compensation payable rate in effect at the date of last exposure.

§ 121.15. Compensation payable.

(a) In computing the time when the disability becomes compensable, the day the injured [employe] employee is unable to continue at work by reason of the injury shall be counted as the first day of disability in the 7 day waiting period. If the injured [employe] employee is paid full wages for the day, shift or turn on which the injury occurred, the following day shall be counted as the first day of disability. In determining the waiting period or time during which compensation is payable, each calendar day, including Sundays and holidays, shall be counted. In determining the period of disability, seven should be used as a divisor to determine the number [of weeks], and any part [thereof], of the weeks.

(b) If death results [within 7 days from the date of] from the injury, compensation payments to all of the [dependent] dependents for death benefits shall begin from the date of the employee's death.

(c) If death results more than 7 days after the injury, compensation payments covering the disability period should be paid as set forth in this chapter[;], and compensation payments because of death due to the injury shall start from the date of death.

* * * * *

§ 121.16. [Statement of compensation paid] Updating claims status.

(a) [As close as practicable to the anniversary date of injury or death, a Statement of Account of Compensation, Form LIBC-392, shall be filed annually with the Department of Labor and Industry (Department) on each open case, showing payments to date of filing.] All of the following apply to the Annual Claims Status Report, Form LIBC-774:

(1) The Bureau will provide the Annual Claims Status Report, Form LIBC-774, to an insurer each year before February 1.

(2) The insurer shall file a completed Annual Claims Status Report, Form LIBC-774, to the Bureau each year before April 16.

(3) If an insurance carrier fails to file the completed report, the Bureau may recommend that the Insurance Commissioner revoke or suspend the insurance carrier's license under section 441(a) of the act (77 P. S. § 997).

(4) If a self-insured employer fails to timely file the completed report, the Secretary of the Department may revoke or suspend the self-insured employer's privilege to carry its own risk under section 441(b) of the act.

(b) [If an agreement or notice of compensation payable provides solely for payment of compensation for a specific loss under section 306(c) of the Workers' Compensation Act (77 P. S. § 513), a Statement of Account of Compensation, Form LIBC-392, will be accepted by the Department as confirmation of final payment.

(c) If liability of an employer for death compensation has terminated because of remarriage of a widow or death of all dependents entitled to compensation, a Statement of Account of Compensation, Form LIBC-392, shall be submitted to the Department along with a certified copy of marriage certificate or death certificate, as the case may be.

(d) If the period for which death compensation payable by the employer has expired, Statement of Account of Compensation, Form LIBC-392, shall be filed with the Department as final payment confirmation.

(e) If compensation is terminated or suspended by decision of a referee, Workmen's Compensation Appeal Board or an appeal court or by original or supplemental agreement signed by the injured employe, a Statement of Account of Compensation, Form LIBC-392, shall be filed with the Department as confirmation of payment.

(f) If a statement of account of compensation is submitted under the requirements of the provisions of this chapter, it shall be signed by an authorized representative of the employer or insurer.] A Final Statement of Account of Compensation Paid, Form LIBC-392, shall be filed with the Bureau immediately after the final payment of compensation.

§ 121.17. [Termination] Change in compensation.

(a) [*By final receipt.* If an injured employe has recovered from his injury so that he has regained his full earning power, and so that all disability due to the injury has terminated, a final receipt may be fully prepared for signature. The fact that the employe returns to similar work at his original or greater wage unaccompanied by a showing that all disability has terminated is not a basis for a final receipt. However, it may be the basis for a suspension of compensation.] If an injured employee has recovered from an injury, or a deceased employee's dependent or personal representative is no longer eligible to receive death benefits, an Agreement to Stop Weekly Workers' Compensation Payments (Final Receipt), Form LIBC-340, may be filed with the Bureau.

(b) [*By agreement.* Termination may be accomplished by agreement to that effect signed by the employer and claimant. A suspension of compensation, rather than a complete termination, may also be accomplished by agreement between the parties.] Termination, suspension, modification or other change in compensation may be accomplished by filing with the Bureau a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337. A Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, may be used to change an Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336, a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, a Notice of Compensation Payable, Form LIBC-495, or an award. A Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, shall be completed before being signed by the

employer and the employee. The completed Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, shall be sent to the employee or his dependents and filed with the Bureau.

(c) [*By petition.* If termination, or suspension, cannot be accomplished as indicated in subsection (a) or (b), the employer shall file petition for termination, or suspension, as provided under section 413 of the Workers' Compensation Act (77 P. S. § 774.2).] A suspension or modification of compensation may be accomplished by the employer mailing a Notification of Suspension or Modification Pursuant to §§ 413 (c) & (d), Form LIBC-751, to the Bureau and the employee. The wage calculation on the Notification of Suspension or Modification Pursuant to §§ 413 (c) & (d), Form LIBC-751, shall be completed for a modification.

(d) [*By decision.* If a decision of a Referee, Board or Appeal Court terminates the payment of compensation, no further documentation is required, except Statement of Account of Compensation, Form OICD-392, showing total compensation paid.] If temporary payments made under § 121.7(a) (relating to notice of compensation payable and notice of temporary compensation payable) are stopped, the employer shall file a Notice Stopping Temporary Compensation, Form LIBC-502, and a Notice of Workers' Compensation Denial, Form LIBC-496, within 5 days of the last payment or file a Notice of Compensation Payable, Form LIBC-495, or file an Agreement for Compensation for Disability or Permanent Injury, Form LIBC-336. The employer may not use a Notification of Suspension or Modification Pursuant to §§ 413 (c) & (d), Form LIBC-751, to stop temporary payments made under § 121.7.

(e) If termination, suspension or modification of compensation cannot be achieved through subsection (a), (b), (c) or (d), the employer may file a petition to: Terminate (stop payment of worker's compensation), Terminate (based upon physician's affidavit, a special supersedeas hearing to be scheduled), Modify or Suspend Compensation Benefits, Form LIBC-378.

§ 121.18. Subrogation [procedure].

(a) [*In the event of*] If a third party obtains recovery under section 319 of the [**Workers' Compensation Act**] act (77 P. S. § 671), a Third Party Settlement Agreement, Form [**OICD-380**] LIBC-380, shall be executed by the parties [**thereon**].

(b) If credit is requested against future compensation payable, a Supplemental Agreement for Compensation for Disability or Permanent Injury, Form LIBC-337, shall also be filed with the [**Department of Labor and Industry indicating**] Bureau, including the amount and periodic method of pro rata reimbursement of attorney fees and expenses.

§ 121.20. Commutation of compensation under section 412 of the act (77 P. S. § 791).

Commutation under section 412 of the [**Workers' Compensation Act**] act (77 P. S. § 791) shall only be allowed for the final [**25**] 52-week period or less. [**It is not intended to permit the payment of compensa-**

tion by 25-week] The commutation amount shall not be paid in installments. [The full amount of compensation commuted shall be sent to the employe with Form LIBC-498 and a copy of this form shall be sent to the Department. If a statement of account showing the full amount of compensation paid, including the amount commuted, accompanies the Department copy of Form LIBC-498, it will serve to close the case. Commutation of payments under section 316 of the Workers' Compensation Act (77 P.S. § 604) is dealt with under the rules for hearing before referees.] A Commutation of Compensation, Form LIBC-498, shall be filed with the Bureau.

§ 121.21. [Coal diseases—claim and reimbursement] Reimbursement for silicosis, anthracosilicosis or coal workers' pneumoconiosis.

(a) Claims for compensation for silicosis, anthracosilicosis or coal workers' pneumoconiosis as defined in section 108(q) of the [Workers' Compensation Act] act (77 P.S. § 27.1(q)), for disability or death, [where] when the date of disability commences or death occurs between July 1, 1973, and June 30, 1976, inclusive, [where] and when the liable employer is seeking to offset part of its liability under section 305.1 of the [Workers' Compensation Act] act (77 P.S. § 411.1), shall be instituted by [claim petition filed with the Department of Labor and Industry (Department) on Form OIDC-362] filing a Claim Petition for Workers' Compensation, Form LIBC-362, with the Bureau.

(b) Unless stayed by a supersedeas on appeal, following the issuance of an award by the [referee] workers' compensation judge, the [appeal board] Board or the appellate court, compensation payments for silicosis, anthracosilicosis or coal workers' pneumoconiosis[, as set forth in section 108(q) of the Workers' Compensation Act] shall be made in full by the insurer [with the following provisions for reimbursement by the Commonwealth in accordance with section 305.1 of the Workers' Compensation Act:]. If the insurer seeks reimbursement from the Bureau under section 305.1 of the act, it shall submit the following to the Bureau:

(1) A notarized statement, signed by an officer of the company, containing an itemized list of payments made to all claimants[, shall be submitted to the Department] for quarterly reimbursement. Each itemized entry shall contain [Social Security number, claimant's name and address, and total amount paid claimant] the claimant's name, address, Social Security number and the total amount paid to the claimant. Each itemized list shall be made for a full and exact calendar quarter[,]: that is, January 1 through March 31[,]; April 1 through June 30[,]; July 1 through September 30[,]; or October 1 through December 31. Each list shall [be submitted in] have two categories: recurring quarterly reimbursement and initial payment made to each claimant, which payment should include the current reimbursable quarter. Each list submitted shall be in roster form and in numerical order according to the

claimant's Social Security number, [shall] contain the claimant's name and Social Security number, [shall] cover the amount to be reimbursed and the total amount paid to the claimant, and [shall] be [submitted on the quarterly reimbursement statement Bureau Form OIDC-683] reported in a format as required by the Bureau.

(2) Each bill containing the itemized entries shall be submitted [in duplicate] to the Bureau [of Occupational Injury and Disease Compensation] no later than the 15th day of the month following the end of the calendar quarter for which reimbursement is sought. A bill received after that date will not be considered for payment until the end of the following quarter.

(c) [For the purpose of auditing, every insurer shall be required to keep concise records concerning payments and reimbursements, to be made available for inspection by the Department or a governmental agency at reasonable times.] For auditing purposes, an insurer shall keep records for 3 years concerning payments and reimbursements made under this section. The records shall be made available for inspection by the Bureau at reasonable times.

(d) If the Bureau [of Workers' Compensation (Bureau) has reason to believe] has information that the insurer [or self-insurer] primarily liable for compensation under the act has failed to make a payment under the act and [the] this section, the Bureau may[, in its discretion, make payments of] pay compensation directly to the claimant, for the portion of the compensation which is payable by the Commonwealth under section 305.1 of the [Workers' Compensation Act] act until [a time] the insurer [or self-insurer] resumes payment of compensation. [Nothing in this section shall require the] The Bureau is not required to initiate direct payments to a claimant [where] when the insurer [or self-insurer] is making full payment of the compensation but is not seeking reimbursement [pursuant to] under this section. [Nothing in this section shall eliminate the responsibility of the insurer or self-insured to comply with the provisions of the act and the provisions of this part or prohibit prosecution for any alleged violations of the act or this part or in accordance with the act.]

§ 121.22. Subsequent injury fund.

(a) Compensation for a subsequent injury, as defined in section 306.1 of the act (77 P.S. § 516) shall be paid as follows:

* * * * *

(2) Upon expiration of the specific loss period, the [Department] Bureau will be responsible for additional compensation due for the duration of total disability. The fund established under section 306.2 of the act (77 P.S. § 517), from which these payments are to be made, shall be maintained as follows:

* * * * *

(b) Insurance carriers shall remit to the [Department] Bureau assessment amounts as follows:

* * * * *

(c) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the [**Department**] **Bureau** will calculate the assessment amount as though an earned premium amount of zero were reported to the Insurance Department.

* * * * *

(e) Self-insured employers and runoff self-insurers shall pay assessments directly to the [**Department**] **Bureau**.

(f) The claimant shall file a [**petition for additional compensation**] **Claim Petition for Additional Compensation from the Subsequent Injury Fund Pursuant to Section 306.1 of the Workers' Compensation Act, Form LIBC-375**, as provided in section 315 of the act (77 P. S. § 602) or the claim will be forever barred.

§ 121.23. Supersedeas fund.

(a) Annual assessments under section 443 of the act (77 P. S. § 999) shall be in amounts determined by the following:

* * * * *

(3) Insurance carriers shall remit to the [**Department**] **Bureau** assessment amounts as follows:

* * * * *

(b) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the [**Department**] **Bureau** will calculate the assessment amount as though an earned premium amount of zero were reported to the Insurance Department.

* * * * *

(d) Self-insured employers and runoff self-insurers shall pay assessments directly to the [**Department**] **Bureau**.

(e) Applications for reimbursement shall be filed directly with the Bureau on [**Form LIBC-662, " an Application for Supersedeas Fund Reimbursement[.]"**, **Form LIBC-662**. Applications will be processed administratively to determine whether the parties can agree on the payment or amount of reimbursement. If the payment or amount of reimbursement cannot be agreed upon, the matter will be assigned to a [**Workers' Compensation Judge**] **workers' compensation judge** for a formal hearing and adjudication.

§ 121.24. [Approval of fees] (Reserved).

[**In all cases involving claim petitions or other petitions under The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201—1603) and the Workers' Compensation Act (77 P. S. §§ 1—1041.4), no agreement or claim for attorney's fees or other disbursements in support of any claim for compensation shall be valid and no payments shall be made pursuant thereto unless the agreement or claim has been approved by the referee or by the Appeal Board, as the case may be, by whom the matter is heard. In all such cases, the referee or the board member hearing the case shall obtain from the**

claimant's attorney a copy of the fee agreement or claim and a copy of any other statement or claim for disbursements to be made on account of the presentation of the case, and, after determining the proper amount to be allowed in relation to the services rendered, shall specify in the decision the amount approved for disbursement.]

§ 121.25. [Delivery of compensation checks] Issuance of compensation payments.

[**(a) In no event may a claimant's check for workmens' compensation or occupational disease compensation be made payable to, or delivered to, an attorney except when the attorney is the administrator or executor of the claimant's estate, a court-appointed trustee, a court-appointed guardian or acting in some other fiduciary capacity. In such cases compensation may be paid to the attorney in his capacity as administrator or executor of the estate, court appointed trustee, court appointed guardian or other fiduciary capacity. Notice of the first payment to a claimant shall be sent to counsel of record. In cases where an attorney's fee and costs have been approved by a referee or the Workmen's Compensation Appeal Board, or where the referee or board determines and awards the attorneys' fee and costs, a check in the amount of the fees and costs, separate from a compensation payment, shall be made payable to the claimant's attorney and mailed to him. The provisions of rules and regulations inconsistent with this section are repealed.**

(b) The claimant's compensation checks shall be mailed by first-class mail to the claimant's last known address, unless the claimant has authorized another method of delivery on a form to be prescribed by the Bureau. In no event shall a claimant or his representative be required to appear at a specific place designated by the employer or insurer in order to receive his compensation payments.] Compensation payments shall be issued according to the following:

(1) Unless the claimant and the employer have executed an Authorization for Alternative Delivery of Compensation Payments, Form LIBC-10, or a court orders payment, a claimant's payment for workers' compensation or occupational disease compensation may not be made payable to or delivered to, an attorney unless the attorney is the administrator or executor of the claimant's estate, a court-appointed trustee, a court-appointed guardian or acting in some other fiduciary capacity.

(2) Notice of the first payment to a claimant shall be sent to counsel of record.

(3) If a workers' compensation judge or the Board approves attorneys' fees and costs, a payment for fees and costs, separate from a compensation payment, shall be made payable, and issued, to the claimant's attorney.

(4) An employer may not require a claimant to appear at a specific place in order to receive compensation payments.

§ 121.26. [Required information for maximum compensation rate increase] (Reserved).

[**(a) General.** The provisions of this section set forth the information required on initial agree-

ments and notices of compensation payable regarding the increase in compensation rates set forth in section 105.2 of the Workers' Compensation Act (77 P. S. § 25.2). The information shall be submitted on notices of compensation payable and initial agreements for all injuries occurring on or after February 3, 1975, since it is expected that some of these cases will be in active payment status on July 1, 1975.

(b) *Purpose.* The purpose of this section is to provide confirmation information to the Department of Labor and Industry as to what rate changes, if any, will occur on July 1, 1975, for injuries occurring on and after February 3, 1975.

(c) *Information required.* Required information shall be as follows:

(1) Statement of Wages (LIBC-494) shall be completed on cases here average weekly wage is less than \$256.50 and attached to Notice of Compensation Payable (LIBC-495). Agreement (LIBC-336) shall also show complete wage information.

(2) If average weekly wage is \$256.50 or more, wage information may be omitted.

(3) On agreements or notices of compensation payable for injuries occurring between February 3, 1975, and July 1, 1975, a phrase shall be inserted under "Remarks" or "Further matters agreed upon":

"Compensation payable on or after July 1, 1975, shall be at the rate of \$_____."

On all injuries occurring on and after July 1, 1975, procedure shall be as outlined under 34 Pa. Code § 121.7(c) (relating to notice of compensation payable) and 34 Pa. Code § 121.8(b) (relating to agreement).]

§ 121.27. [Violations of the provisions of the act or this chapter] Orders to show cause.

(a) [The provision of 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) applies to proceedings involving violations of the act or this chapter.] The Department may serve an order to show cause on a respondent for an alleged violation of the act or regulations. The order to show cause will contain the particulars of the alleged violation and the procedures for filing an answer under subsection (b).

(b) [Whenever the Department of Labor and Industry (Department) has information, through its own investigation or through complaint by a party to the Department in writing on a form prescribed by the Department, upon which it believes that a violation of the provisions of the act or this chapter has occurred, the Department may serve upon the respondent who has allegedly violated the provisions of the act or this chapter an order to show cause why the respondent should not be found in violation of the provisions of the act or this chapter. The order will set forth the particulars of the alleged violation. A copy of the order will be sent to the employer, his insurer, and the employe or family of the employe involved in the alleged violation. The Legal Division of the Bureau of Workers' Compensation shall be deemed to be a party to be served with notice of any petition for penalties

filed with the Department on the form prescribed by the Department and any other items pertinent to any proceedings on a petition. This subsection supplements 1 Pa. Code § 35.14 (relating to orders to show cause).] A written answer to the order to show cause may be filed no later than 20 days after the date that the order to show cause is served on the respondent. The answer shall admit or deny the allegations in the order to show cause and state respondent's defense. General denials that are unsupported by specific facts will not comply with this section and may be deemed a basis for entry of a final order because the respondent has raised no issues requiring further proceedings. The facts in the order to show cause may be deemed admitted if a respondent fails to file a timely answer under this subsection.

(c) [The order to show cause will set forth a date, time and place for a hearing for the purpose of determining whether the violation as alleged has occurred. This subsection supplements 1 Pa. Code § 35.14 (relating to orders to show cause).] 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.

(d) [The order to show cause will also specify the date, place and person to be served with an answer to the order to show cause. An answer to the order to show cause shall be filed no later than 15 days following the date that the order to show cause is served on the parties as provided for in section 416 of the Workers' Compensation Act (77 P. S. § 821). This subsection supplements 1 Pa. Code §§ 35.14 and 35.37 (relating to orders to show cause; and answers to orders to show cause).] The hearing will be conducted under this section and, when applicable, 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.

(e) [Failure of the respondent to answer and appear at the scheduled hearing will be considered an admission of the allegations contained in the order to show cause and will form the basis for a decision that a violation of the act or this chapter has occurred.] Hearings shall be stenographically recorded and the transcript of the proceedings shall be part of the record and kept by the Department.

(f) [The respondent shall have the burden of coming forth with evidence showing compliance with the provisions of the act or this chapter; but the Department or the party complaining of such violation of the act or this chapter, or the Department and the complaining party, shall have the burden of proving that such violation has occurred.] If the respondent fails to appear in person or by counsel at the scheduled hearing without adequate excuse, the hearing officer shall decide the matter on the basis of the order to show cause and evidence presented.

(g) [In instances where the Department has not instituted proceedings as set forth in this section but where it becomes apparent during the conduct

of any hearing before a referee that a violation of the provisions of the act or this chapter may have occurred, the Department shall forthwith be notified in writing of this possibility by the referee hearing the matter and by the claimant or his representative. The Department shall be given the opportunity to participate in any proceedings where a possible violation of the act or this chapter exists and where penalties under section 435(d)(i) of the Workers' Compensation Act (77 P. S. § 991(d)(i)) are or may be sought. The Department will indicate in writing within 15 days after receipt of the written notice of these possible violations whether it will participate in the penalty proceedings or not.] The Department has the burden to demonstrate, upon a preponderance of the evidence, that the respondent failed to comply with the act or regulations.

[(h) In the event the Department does indicate that it will participate in the penalty proceedings, the Department will receive notice of any further hearings on the matter giving rise to the penalty proceeding and shall be treated as a party to those proceedings for the purposes of notice, decision and any further appeals.

(i) In the event the Department indicates that it will not participate in the penalty proceedings, the Department will receive a copy of the decision of the referee as to the disposition of the penalty request and proceedings. It shall be the duty of the party to the proceedings to advise the Department as to any further appeals on the issue of penalties and the outcome of the appeals, including appeals to and decisions by the Workmen's Compensation Appeal Board and any court of competent jurisdiction.

(j) Notwithstanding other provisions of this section, the Department may assign a petition for penalties presented to the Department by a party to a referee for hearing and determination without the participation of the Department. If the Department will so assign a matter to a referee, the petition will contain an indication that the Legal Division of the Bureau of Workers' Compensation has reviewed the petition and has decided not to participate in the proceedings. Nothing contained in this subsection shall be construed to eliminate the requirements that the Legal Division of the Bureau of Workers' Compensation shall receive notice of other items pertinent to any proceeding on such a petition; reference should be made to subsections (b) and (i) particularly.

(k) In deciding whether to issue an order to show cause under subsection (b) of this section or to participate in proceedings assigned under subsection (j), the Legal Division of the Bureau of Workers' Compensation and the Department will consider at least the following:

- (1) The nature of the offense alleged.
- (2) The relative seriousness of the offense or violation alleged.
- (3) The amount of compensation or penalty, or both, involved.
- (4) The temporal duration of the alleged violation.

(5) The impact of the alleged violation, financially or otherwise, on the complainant.

(6) The repetitive pattern, if any, apparent in the alleged violation—that is, has the respondent committed this same violation or others in regard to the same case previously.

(7) The repetitive pattern, if any, in general in regard to this respondent and other violations, alleged or proven.

(8) The extent and nature of the alleged violation in relation to other violations, alleged or proven, of other respondents.

(9) The explanation, excuse, good faith and the like, if any, offered by the respondent and verified through investigation or otherwise.

(10) The workload and staff available to prosecute or participate in these proceedings.

(11) The priorities established, if any, given the workload and staff.

(12) The chance of successful prosecution or participation, including the veracity and availability of witnesses or evidence, or both, necessary to prosecute the matter.

(13) Other factors relevant to this decision not specifically itemized but which may become apparent in the investigation of a particular case.

(l) The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

(1) *Act*—The Workers' Compensation Act (77 P. S. §§ 1—1041.4).

(2) *Department*—The Department of Labor and Industry, the Bureau of Workers' Compensation.

(3) *Notice to the Department*—Mailing by first class mail to the Legal Division of the Bureau of Workers' Compensation at their offices in Harrisburg.

(4) *Referee*—Workmen's Compensation referee as defined in section 401 of the act (77 P. S. § 701) or other hearing officer as appointed by the Secretary of the Department of Labor and Industry.

(5) *Respondent*—An insurer or self insurer, including the State Workmen's Insurance Fund, which may have violated the provisions of the act or this chapter.]

(h) This section supersedes 1 Pa. Code §§ 35.14, 35.37, 35.131 and 35.201—35.214.

§ 121.27a. Bureau intervention and penalties.

(a) If the workers' compensation judge determines that penalties resulting from an alleged violation of the act or regulations may be imposed on a party under section 435 of the act (77 P. S. § 991), the workers' compensation judge may notify the Bureau in writing within 20 days of the notice of the alleged violation.

(b) The workers' compensation judge will include a description of the nature of the alleged violation in the notice and will provide the Bureau with an opportunity to participate in the proceeding as an intervening party. The workers' compensation

judge will provide a copy of the notification to all parties.

(c) Within 20 days after receipt of the notice, the Bureau will notify the workers' compensation judge and the parties of its decision to participate in the proceeding or to allow the proceeding to continue without intervention. If the Bureau fails to respond to the notification within 20 days, the Bureau shall not have intervened. By not intervening before the workers' compensation judge, the Bureau has not waived its right to intervene in a different forum or following additional notice from the workers' compensation judge in the same proceeding.

(d) Nothing in this section shall be construed to require the Bureau to intervene in any matter or to restrain a workers' compensation judge from notifying the Bureau of a further alleged violation of the act or regulations in a case.

(e) This section supplements 34 Pa. Code §§ 131.121 and 131.122 (relating to penalty proceedings initiated by a party; and other penalty proceedings).

§ 121.28. [Petitions designated as a request for supersedeas] (Reserved).

[In any case in which a petition to terminate, modify, review or set aside notices of compensation payable, an agreement, supplemental agreement or an award under section 413(a) of the Workers' Compensation Act (77 P. S. § 774.2(a)) is designated as a request for supersedeas, supersedeas may be granted at the discretion of the referee only after a hearing has been scheduled and held under the provisions of act. Upon receipt of a petition designated as a request for supersedeas under section 413(a) of the Workers' Compensation Act, the Department shall immediately assign the petition to a referee who shall forthwith schedule a hearing to consider the request for the supersedeas and the merits of the petition. The referee hearing the case shall, within 2 days of the hearing, render a decision on the issue of supersedeas and shall dispose of the rest of the issues as soon as practicable by a written decision. This rule does not apply to petitions which operate as an automatic supersedeas under section 413(a) of the Workers' Compensation Act nor is it intended to controvert any other provisions of the act.]

§ 121.30. [Still payable list] Section 306(h) payments (77 P. S. § 583).

(a) Under section 306(h) of the [Workers' Compensation Act] act (77 P. S. § 583), [insurance carriers and self-insured employers, including the State Workmen's Insurance Fund,] insurers shall [submit] have submitted a listing of all pre-March 17, 1968, cases on which compensation is [still] payable on July 1, 1975. This listing must have been received in the Bureau no later than July 1, 1975.[, and should contain the following particulars:

- (1) Name of claimant.
- (2) Social Security number.
- (3) Bureau file number.

- (4) Claimant's date of birth.
- (5) Date of accident.
- (6) Name of employer.
- (7) Insurer number.
- (8) Current compensation rate.
- (9) Adjusted compensation rate.
- (10) Reimbursable difference.
- (11) Period of payment schedule.]

(b) [The quarterly reimbursement certification procedure shall be as follows: A notarized statement, signed by an officer of the company, containing an itemized list of payments made to all claimants, shall be submitted to the Department no later than the tenth day of the month following the quarter for which advance reimbursement payments have been made. Each itemized entry shall contain the following information:

- (1) Social Security number.
- (2) Claimant's name.

(3) Total amount paid each claimant per quarter.] If the insurer seeks reimbursement from the Bureau under section 306(h) of the act, it shall submit the following to the Bureau on a quarterly basis: a notarized statement, signed by an officer of the company, containing an itemized list of payments made to all claimants, submitted no later than the 10th day of the month following the quarter for which advance reimbursement payments have been made. Each itemized entry must contain the following information: the claimant's name, Social Security number and the total amount paid each claimant per quarter.

(c) Changes in a payment schedule to [any] an individual [must] shall be reported to the [Department] Bureau within 10 days of the change. The [Department] Bureau will take credit in the following reimbursable quarter for an overpayment caused by change in a payment schedule.

(d) For auditing purposes, every insurer shall keep records for 3 years concerning payments and reimbursements made under this section. The records shall be made available for inspection by the Bureau at reasonable times.

(e) If the Bureau believes that the insurer primarily liable for compensation under the act has failed to make any payment under the act and the related regulations, the Bureau may pay compensation directly to the claimant, for the portion of the compensation which is payable by the Commonwealth under section 306(h) of the act. Nothing in this section shall require the Bureau to initiate direct payments to a claimant when the insurer is making full payment of the compensation but is not seeking reimbursement under this section.

§ 121.31. Workmen's Compensation Administration Fund.

* * * * *

(c) Insurance carriers shall remit to the [Department] Bureau assessment amounts as follows:

* * * * *

(d) If the amount of earned premium as reported to the Insurance Department, by an insurance carrier, for the preceding calendar year is less than zero, the [**Department**] **Bureau** will calculate the assessment amount as though an earned premium amount of zero were reported to the Insurance Department.

* * * * *

(f) Self-insured employers and runoff self-insurers shall pay assessments directly to the [**Department**] **Bureau**.

§ 121.32. Office of Small Business Advocate.

(a) The [**Department**] **Bureau** may collect annual assessments imposed on insurance carriers, but not on self-insured employers or runoff self-insurers, for the purpose of funding the Office of Small Business Advocate in accordance with section 1303 of the act (77 P.S. § 1041.3). Insurance carriers shall be directly liable to the [**Department**] **Bureau** for prompt payment of assessments for the Office of Small Business Advocate, as provided in the act and this chapter.

* * * * *

§ 121.33. Collection of special funds assessments.

(a) The [**Department**] **Bureau** will collect assessments for the special funds by calculating the total amount of the following:

(1) What each self-insured employer is liable for paying to the [**Department**] **Bureau**.

(2) What each insurance carrier is responsible for collecting from insured employers and remitting to the [**Department**] **Bureau**.

(b) Assessments for the special funds shall be imposed, collected and remitted as follows:

(1) The [**Department**] **Bureau** will transmit to each insurance carrier and self-insured employer a notice of assessment amount to be collected, which shall specify the amount calculated under subsection (a) and the date on which the amount is due.

(2) Each self-insured employer shall timely remit to the [**Department**] **Bureau** the amount calculated under subsection (a)(1).

(3) Each insurance carrier shall collect payment for assessments from insured employers according to the procedures defined by the approved rating organization and approved by the Insurance Commissioner and timely remit payment to the [**Department**] **Bureau**.

(4) The failure of any insurance carrier to receive payment from an insured employer does not limit an insurance carrier's responsibility to collect and timely remit to the [**Department**] **Bureau** the total amount calculated under subsection (a)(2).

§ 121.34. Objections to assessments.

(a) A party receiving a notice of assessment amount to be collected from the [**Department**] **Bureau** may, within 15 days of receipt, object to the assessment reflected in the notice on the basis that it is excessive, erroneous, unlawful or invalid. Insured employers retain all rights provided under section 717 of the act (77 P.S. § 1035.17).

* * * * *

(d) An objection not conforming to this section or the act will be rejected by the [**Department**] **Bureau**. The

[**Department**] **Bureau** will notify the objecting party of the specific reasons for the rejection. The objecting party shall have 30 days to cure any deficiency.

(e) Upon receipt of an objection which conforms to this section and the act, the Department will hold a hearing in accordance with 1 Pa. Code Part II (relating to [**the general rules of administrative practice and procedure**] **General Rules of Administrative Practice and Procedure**). After the hearing, the Department will record its findings on any objections and will transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with the findings. The amount shall be paid by the objector within 10 days after receipt of the findings. After payment has been made, the objector may initiate an action in the appropriate court to recover the payment of the assessment or any portion thereof. [**No**] **An insurer may not** maintain an action to recover payment unless it has previously objected under subsection (a).

§ 121.35. Annual reports of compensation paid.

Every annual report of compensation paid made by an insurer under sections 445 and 446(e) of the act (77 P.S. §§ 1000.1 and 1000.2(e)) shall include amounts paid by an insurer for which policyholders have agreed to [**reimburse**] **reimburse** the insurer under deductible policies issued under section 448 of the act (77 P.S. § 1000.4).

[Pa.B. Doc. No. 05-1291. Filed for public inspection July 8, 2005, 9:00 a.m.]

[34 PA. CODE CH. 123]

Qualifications for Vocational Experts

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), proposes to amend Chapter 123 (relating to general provisions—Part II) to read as set forth in Annex A. The proposed rulemaking provides guidance regarding the act of December 23, 2003 (P.L. 371, No. 53) (Act 53), which amended the Workers' Compensation Act (act) (77 P.S. §§ 1—1041.4 and 2501—2506), and implements Act 53. Specifically, Act 53 contains amendments to section 306(b) of the act (77 P.S. § 512(2)). The Department also proposes to delete § 123.201a (relating to effect of Act 53 regarding qualifications of vocational experts—statement of policy).

Statutory Authority

This rulemaking is proposed under the authority in sections 401.1 and 435 of the act (77 P.S. §§ 710 and 991). Additionally, section 306(b) of the act specifically authorizes the Department to promulgate regulations establishing the minimum qualifications for vocational experts.

Background

On December 23, 2003, Governor Edward G. Rendell signed Act 53 into law. Act 53 amended section 306(b)(2) of the act. Before its amendment, section 306(b)(2) of the act provided a means for insurers to assess an employee's earning power through an interview "by an expert approved by the department and selected by the insurer." The passage of Act 53 has eliminated the requirement that the Department approve these experts. Instead, Act 53 permits insurers to select an expert "who meets the

minimum qualifications established by the Department through regulation.”

Act 53 further amended section 306(b)(2) of the act by providing that vocational experts “shall comply with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses.” Act 53 also added section 306(b)(2.1) (77 P. S. § 512(b)(2.1)) of the act, which provides that an insurer must disclose to the employee prior to his referral to an earning power assessment interview, any financial interest that the insurer has in the person or entity that will conduct the earning power assessment interview.

Purpose

This proposed rulemaking implements Act 53. It provides guidance to Bureau staff, workers’ compensation insurance carriers, self-insured employers, employees, workers’ compensation judges, workers’ compensation practitioners and other interested parties concerning the qualifications and role of vocational experts in workers’ compensation proceedings under section 306(b) of the act and section 449 of the act (77 P. S. § 1000.5). Other than in instances when a workers’ compensation judge has determined that a vocational expert or insurer has failed to comply with §§ 123.204 and 123.205 (relating to conduct of expert witness; and financial interest disclosure), this proposed rulemaking is not intended to restrict or limit the authority that workers’ compensation judges currently possess.

Stakeholder Meeting

On June 11, 2004, the Department held a stakeholder meeting regarding the Act 53 amendments. Testimony was received from Irwin Aronson and David Wildeman, representing the AFL-CIO; and Terry Leslie, representing the Pennsylvania Association of Rehabilitation Professionals. In addition, the Department received written comments from the Pennsylvania Association of Rehabilitative Professionals Administrative Services, the Pennsylvania Trial Lawyers Association, The Insurance Federation of Pennsylvania Inc., CEC Associates, Inc. and Senator Noah W. Wenger. The Department has reviewed and considered all comments received.

Summary of Proposed Rulemaking

The minimum qualifications set forth in this proposed rulemaking are the minimum qualifications specified in Act 53.

§ 123.201. Purpose.

The amendments to this section reflect the passage of Act 53 and clarify that Act 53 no longer requires Departmental approval of vocational experts that wish to conduct earning power assessment interviews.

§ 123.201a. Effect of Act 53 regarding qualifications of vocational experts—statement of policy.

The statement of policy is proposed to be deleted.

§ 123.201b. Definitions.

This new section defines the terms “financial interest” and “insurer.” The definition of “financial interest” is necessary to implement Act 53’s financial interest disclosure requirements under section 306(b)(2.1) of the act. The definition of “insurer” is necessary to explain the scope of the disclosure requirements under § 123.205. A “financial interest” is an interest equated with money or its equivalent, and includes any of the following: an ownership interest in the entity which employs the

vocational expert; a present or former employment relationship between the vocational expert and the insurer making the referral; a managerial, fiduciary or controlling interest in the vocational expert or entity employing the vocational expert; or a contractual or referral arrangement that would require or allow the insurer to provide compensation or other consideration based upon the vocational expert’s opinion or outcome of the vocational expert’s earning power assessment interview.

An insurer is any of the following: a workers’ compensation insurance carrier; the State Workers’ Insurance Fund; an employer authorized by the Department to self-insure its workers’ compensation liability under section 305 of the act (77 P. S. § 501); or a group of employers authorized by the Department to act as a self-insurance fund under section 802 of the act (77 P. S. § 1036.2).

§ 123.202. Qualifications.

This section provides that individuals, who have previously performed as vocational experts in workers’ compensation proceedings prior to the promulgation of this proposed rulemaking, remain able to perform as vocational experts under the previous qualification standards in this section. Further, these individuals are approved to conduct earning power assessment interviews under section 449 of the act.

§ 123.202a. Qualifications for vocational experts under Act 53 of 2003.

This proposed rulemaking defines the minimum qualifications for individuals who have not previously performed as vocational experts prior to the effective date of the adoption of this proposed rulemaking. Individuals who have not performed as vocational experts prior to the adoption of this proposed rulemaking shall satisfy new minimum qualifications to be a vocational expert under the act. Specifically, these individuals must possess a current license in good standing as a licensed professional counselor or hold a Bachelor’s or postgraduate degree in rehabilitation or a related counseling field and: 1) be certified by a Nationally recognized professional organization; or 2) have 1 year’s experience in vocational analysis, evaluation and testing, placement of individuals with disabilities and analyzing labor market information and occupational trends. The proposed amendments to the minimum qualifications are intended to more accurately reflect the knowledge and skill required to provide quality vocational expert services under the act. Further, these individuals are approved to conduct earning power assessment interviews under section 449 of the act.

§ 123.203. Role of compensation judges.

This section provides that the workers’ compensation judge will determine whether a vocational expert meets the minimum requirements under section 306(b) of the act. Workers’ compensation judges are empowered to make determinations on a vocational expert’s bias and objectivity. However, if the vocational expert has not complied with § 123.204 or the insurer has not complied with the requirements of § 123.205, the workers’ compensation judge is not permitted to consider the results of the earning power assessment interview.

§ 123.204. Conduct of expert witness.

This provision implements Act 53’s requirement that a vocational expert comply with the *Code of Professional Ethics for Rehabilitation Counselors* (Code). The Department intends that the standards it has developed are the only criteria required for compliance with the Code. This

section provides that a vocational expert is required to disclose to the claimant the role or limits of their relationship. Moreover, the provision states that the vocational expert must generate written documentation, in the form of case notes or a report, of the vocational expert's involvement in the litigation and conclusions from the earning power assessment interview.

§ 123.205. Financial interest disclosure.

Under section 306(b)(2.1) of the act, if an insurer intends to refer an employee for an earning power assessment interview to a person or entity with whom the insurer has a financial interest, the insurer must disclose that financial interest to the employee prior to the referral. However, this provision further provides that the mere payment of the cost of a vocational interview will not, of itself, be deemed a financial interest requiring disclosure. For the purposes of this section, a third-party administrator or other entity that performs services for an insurer is also considered an insurer.

Affected Persons

The persons affected by this proposed rulemaking are employees, self-insured employers, workers' compensation insurance carriers, workers' compensation judges, workers' compensation practitioners and individuals who wish to serve as vocational experts under the act.

Fiscal Impact

There is no significant fiscal impact associated with this proposed rulemaking.

Reporting, Recordkeeping and Paperwork Requirements

The Department does not anticipate any changes in existing reporting, recordkeeping or other paperwork requirements.

Effective Date

This proposed rulemaking will take effect upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

A sunset date is not appropriate for these regulations. However, the Department will continue to monitor the impact and effectiveness of the regulations.

Public Comment and Contact Person

Interested parties should submit written comments, recommendations or objections to the proposed rulemaking to Eileen K. Wunsch, Chief, Health Care Services Division, Bureau of Workers' Compensation, P. O. Box 15121, Harrisburg, PA 17105 within 30 days of the publication of the proposed rulemaking in the *Pennsylvania Bulletin*. The proposed rulemaking will also be available on the Department's website at www.dli.state.pa.us. Written comments received by the Department may be made available to the public.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 27, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objec-

tions to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

STEPHEN M. SCHMERIN,
Secretary

Fiscal Note: 12-68. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 123. GENERAL PROVISIONS—PART II

Subchapter C. QUALIFICATIONS FOR VOCATIONAL EXPERTS [APPROVED BY THE DEPARTMENT]

§ 123.201. Purpose.

This subchapter **implements and** interprets provisions of the act which **[require]** permit the Department to **[approve]** establish qualifications for vocational experts who will conduct earning power assessment interviews under sections 306(b)[(2)] and 449 of the act (77 P. S. §§ 512[(b)](2) and 1000.5). **[The experts contemplated by this subchapter are vocational evaluators.]** The act's requirements for compliance with the Code of Professional Ethics for Rehabilitation Counselors and financial interest disclosure are also contained in this subchapter.

§ 123.201a. **[Effect of Act 53 regarding qualifications of vocational experts—statement of policy] (Reserved).**

[(a) The Department adopts this section so that all parties will have a clear understanding of their rights and obligations under section 306(b) of the act (77 P. S. § 512). This does not constitute a rule or regulation and is temporary. The Department intends to promulgate regulations on this topic.

(b) The minimum qualifications in § 123.202 (relating to qualifications) are the minimum qualifications established by the Department for vocational experts as specified in Act 53 of 2003 (P. L. 371, No. 53)(Act 53) which amended section 306(b) of the act, effective December 23, 2003.]

§ 123.201b. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly states otherwise:

Financial interest—An interest equated with money or its equivalent, and includes any of the following:

(i) An ownership interest in the entity which employs the vocational expert.

(ii) A present or former employment relationship between the vocational expert and the insurer making the referral.

(iii) A managerial, fiduciary or controlling interest in the vocational expert or entity employing the vocational expert.

(iv) A contractual or referral arrangement that would require or allow the insurer to provide compensation or other consideration based upon the vocational expert's opinion or outcome of the vocational expert's earning power assessment interview.

Insurer—An insurer is any of the following:

- (i) A workers' compensation insurance carrier.
- (ii) The State Workers' Insurance Fund of the Department.
- (iii) An employer authorized by the Department to self-insure its workers' compensation liability under section 305 of the act (77 P. S. § 501).

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

§ 123.202. Qualifications for current vocational experts under Act 57 of 1996.

(a) [To be an expert approved by the Department for the purpose of conducting] This section applies to individuals who before _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), conducted earning power assessment interviews[, the individual shall possess a minimum of] under section 306(b) of the act (77 P. S. § 512(2)). These individuals continue to meet the qualifications established under section 306(b) if they possess a minimum of one of the following:

(1) Both of the following:

* * * * *

(i) Certification by one of the following Nationally recognized professional organizations:

* * * * *

(E) Other Nationally recognized professional organizations [approved], published by the Department in the *Pennsylvania Bulletin*.

(b) Individuals meeting the minimum qualifications under subsection (a) are approved to conduct earning power assessment interviews under section 449 of the act (77 P. S. § 1000.5).

§ 123.202a. Qualifications for vocational experts under Act 53 of 2003.

(a) This section applies to individuals who, before _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), have not conducted earning power assessment interviews under section 306(b) of the act (77 P. S. § 512(2)). These individuals meet the qualifications established under section 306(b) if they possess one of the following:

(1) A current license, in good standing, as a licensed professional counselor under the Social

Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. §§ 1901—1920.2).

(2) A Bachelor's or postgraduate degree in rehabilitation or a related counseling field and one of the following:

(i) Certification by any of the following Nationally recognized professional organizations:

(A) The American Board of Vocational Experts.

(B) The Commission on Rehabilitation Counselor Certification.

(C) The Commission on Disability Management Specialists Certification.

(D) The National Board of Certified Counselors.

(E) Other Nationally recognized professional organizations, published by the Department in the *Pennsylvania Bulletin*.

(ii) One year's experience in vocational analysis, evaluation and testing, placement of individuals with disabilities, and analyzing labor market information and occupational trends.

(b) Individuals meeting the minimum qualifications under subsection (a) are approved to conduct earning power assessment interviews under section 449 of the act (77 P. S. § 1000.5).

§ 123.203. [Credibility determinations] Role of workers' compensation judges.

[Credibility determinations relating to the experts contemplated by this subchapter are within the province of the workers' compensation judge.]

(a) A workers' compensation judge will determine whether a vocational expert meets the minimum qualifications established in §§ 123.202 and 123.202a (relating to qualifications for current vocational experts under Act 57 of 1996; and qualifications for vocational experts under Act 53 of 2003).

(b) Except for subsection (c), this subchapter does not limit a workers' compensation judge's other statutory or regulatory authority and the ability to determine a vocational expert's bias or objectivity.

(c) A workers' compensation judge may not consider the results of an earning power assessment interview if the vocational expert has not complied with § 123.204 (relating to conduct of expert witness) or if the insurer has not complied with the requirements of § 123.205 (relating to financial interest disclosure).

§ 123.204. Conduct of expert witness.

(a) A vocational expert who conducts an earning power assessment interview on an insurer's behalf shall disclose to the employee the role and limits of the vocational expert's relationship with the insurer.

(b) A vocational expert who conducts an earning power assessment interview on an insurer's behalf shall generate written documentation, in the form of case notes or in a report, as to the expert's involvement in the litigation and conclusions from the interview.

§ 123.205. Financial interest disclosure.

(a) For the purposes of this section, a third-party administrator or another entity that performs services on behalf of an insurer, as specified in section 441(c) of the act (77 P. S. § 997(c)), is an insurer.

(b) Before an insurer refers an employee for an earning power assessment interview, the insurer shall disclose to the employee, under section 306 (b)(2.1) of the act (77 P. S. § 512(2.1)), any financial interest the insurer has with the person or entity

conducting the earning power assessment interview.

(c) The insurer is not required to disclose under this section the mere payment of the vocational interview's cost, without receipt of some other additional form of consideration.

[Pa.B. Doc. No. 05-1292. Filed for public inspection July 8, 2005, 9:00 a.m.]