

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Industrial Commission

Regulation/Package Title: Claims Procedures, Ethics

Rule Number(s): 4121-3-09; 4121-3-10; 4121-3-13; 4121-3-15; 4121-3-19; 4121-3-26;  
4121-3-32; 4121-3-34; 4121-15-10

Date: 10/13/2016

**Rule Type:**

- ☐ New  
☐ Amended

- ☒ 5-Year Review  
☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

1. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

In brief, the rules under Chapter 4121-3 set forth the claims procedures for the adjudication of workers' compensation claims before the Ohio Industrial Commission. The rules under

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Chapter 4121-15 set forth the code of ethics for Ohio Industrial Commission employees. The Commission is recommending amendments to four rules and is recommending five rules remain unchanged. The Commission recommends the following amendments:

**Rule 4121-3-10 Lump sum payments for attorney's fees for securing an award**

The Industrial Commission proposes to amend the rule to include a paragraph addressing the setting of the biweekly rate reduction and repayment schedule in a self-insuring claim.

**Rule 4121-3-15 Percentage of permanent partial disability**

The Industrial Commission proposes to amend the rule to delete a redundant reference to the term "injured worker" and correct a cross-reference in the rule. Specifically, Ohio Adm.Code 4121-3-15(D) contains the phrase "injured or disabled injured worker" and Ohio Adm.Code 4121-3-15(D)(3) currently refers to paragraph (A)(7) of Ohio Adm.Code 4121-3-09 for information on depositions. The correct paragraph is paragraph (A)(8) of Ohio Adm.Code 4121-3-09.

**Rule 4121-3-32 Temporary disability**

The Industrial Commission proposes to amend the rule to include the phrase "staff hearing officer, deputy and the Industrial Commission" throughout Ohio Adm.Code 4121-3-32(B)(2) to reflect that the listed persons can also terminate temporary total disability after a hearing.

**Rule 4121-3-34 Permanent total disability**

The Industrial Commission proposes to amend the rule to remove the word "and" from the phrase "permanent and total disability" throughout the rule in order to be consistent. The Industrial Commission also proposes to substitute the word "award" for the word "finding" in Ohio Adm.Code 4121-3-34(C)(3)(b). Finally, the Industrial Commission proposes to replace the word "self-insured" with the word "self-insuring" in Ohio Adm.Code 4121-3-34(D)(1)(f).

The Commission proposes to file the following rules as no change: Ohio Adm.Code 4121-3-09; 4121-3-13, 4121-3-19; 4121-3-26; 4121-15-10.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

<b>Rule Number</b>	<b>Authorizing Statute</b>
4121-3-09	4121.30, 4121.31, 4121.36, 4123.53, 4123.651
4121-3-10	4121.30, 4121.31, 4123.06

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4121-3-13	4121.30, 4121.31, 4121.36
4121-3-15	4121.30, 4121.31, 4121.36, 4123.57
4121-3-19	4121.30, 4121.31
4121-3-26	4121.30, 4121.31
4121-3-32	4121.30, 4121.31, 4123.56
4121-3-34	4121.30, 4121.32
4121-15-10	4121.122, 4121.30, 4121.31

- 3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

These rules set forth the procedures and guidelines for handling claims.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The Industrial Commission monitors the hearing process using a variety of metrics to ensure the agency is abiding by statutory requirements.

### **Development of the Regulation**

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The Industrial Commission has a Rules Advisory Committee consisting of representatives from the Ohio Manufacturers Association, the Ohio Association of Self-Insuring Employers,

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the Ohio Chamber of Commerce, the Ohio AFL-CIO, the Injured Worker's Bar, members of the Association of Claimants' Counsel and BWC attorneys. The Commission e-mailed the proposed changes to the Rules Advisory Committee prior to meeting with the Commission on several occasions. The members of the Rules Advisory Committee met with Commission staff on May 10, 2016 and August 10, 2016 and offered suggestions and comments on the proposed revisions.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The Commission received input from the Rules Advisory Committee and determined changes were needed to 4121-3-10, 4121-3-15, 4121-3-32, and 4121-3-34. It was also determined that the remainder of the rules for review did not require any changes at this time based on a majority consensus.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Not applicable.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The Commission did not consider alternative regulations for the reason that the stakeholder groups that represent both the employers and injured workers agree on the proposed amendments.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**  
*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Not applicable.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Industrial Commission and the Bureau of Workers' Compensation are the only state agencies that have the responsibility to adjudicate contested workers' compensation claims matters. There is no other state agency that is tasked with the same functions and duties of the Commission. Commission staff members meet with the Bureau of Workers' Compensation staff monthly to review both Commission proposed rule actions and Bureau of Workers' Compensation proposed rule actions to ensure that the two agencies' rules do not conflict.

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**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Commission will educate its hearing officers on the changes through its Legal Resource Center and its ongoing regional training. The Commission will inform representatives of injured workers and employers of the changes through various organizations. The Commission schedules statewide hearings officer meetings in which several hundred representatives from both parties are present and an update on our rules is provided. Information regarding proposed rules, as well as final rules, are noted on the Commission's webpage, Facebook, and the Adjudicator. The Commission also notifies representatives of parties of rule changes through e-mail communication.

### **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

- a. The impacted business community consists of state-fund and self-insuring employers.
- b. There is no adverse impact.
- c. The impact cannot be quantified in dollars, hours to comply or other such factors.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Not applicable.

### **Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Not applicable.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Not applicable.

**18. What resources are available to assist small businesses with compliance of the regulation?**

Not applicable.