



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers' Compensation.

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Chapter 4123-19 Self-insuring employer rules.

Rule Number(s): 4123-19-03, 4123-19-06, 4123-19-09, and 4123-19-16

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/_4_ rules (FYR? No)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

BWC has identified and is proposing several changes to Chapter 4123-19 rules in response to the Common Sense Initiative Office (CSI) initiative encouraging state agencies to remove references to outmoded means of communication and in-person interaction from their rules where appropriate.

Additionally, BWC is proposing to clarify several references in the rules to self-insuring employers “providing compensation, etc., directly” to the more precise “providing compensation and benefits directly.”

Proposed changes:

O.A.C. 4123-19-03

• Removed the words “, signed in handwriting,” from paragraph (L)(2) of the rule as outdated and unnecessary.

O.A.C. 4123-19-06

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- For clarity, removed “, etc.” and replaced with “and benefits” in paragraphs (A) and (D)(1) of the rule. The term “benefits” is defined in O.A.C. 4123-19-01(A).

O.A.C. 4123-19-09

- For clarity, removed “, etc.” and replaced with “and benefits” in paragraph (H) of the rule. The term “benefits” is defined in O.A.C. 4123-19-01(A).

O.A.C. 4123-19-16

- Revised paragraph (K)(4) of the rule to remove the words “written” and “signed” as outdated and unnecessary.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Authorized by 4121.12, 4121.121, 4121.13, 4121.30, 4123.05

Amplifies 4123.29, 4123.35, 4123.352, 4123.58

4. 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.

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

N/A

6. 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 are a portion of the rules that govern self-insurance in Ohio’s workers’ compensation system and are required by ORC 4123.35. They are intended to inform Ohio employers of the requirements of self-insurance.

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

These rules do not lend themselves to measurement. The success of these rules is measured by the ability of workers’ compensation stakeholders to understand and follow the rules.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

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No.

Development of the Regulation

- 9. 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 proposed rules were sent for stakeholder feedback on July 8, 2021. The proposed rules were distributed to various individuals, including members of the Ohio Self-Insurance Association workgroups and the Ohio Manufacturers' Association.

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

No stakeholder feedback was provided.

- 11. 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?**

N/A

- 12. 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?**

These rules generally follow statutory mandates. For example, O.A.C. 4123-19-16, "Self-insured construction projects" is based on requirements in R.C. 4123.35(O). The statute provides the basic parameters of the regulation; these rules inform stakeholders of the procedures and policies the BWC will use to implement these regulations.

- 13. 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.***

Performance based regulations are not appropriate for the content of these rules.

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

The BWC is the only state agency regulating workers' compensation claims, and thus there is not another agency promulgating rules on these subjects.

- 15. 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.**

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The BWC will post the rules on <https://codes.ohio.gov/ohio-administrative-code>.

Adverse Impact to Business

16. 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; and

The impacted community includes employers in the workers' compensation system. Specifically, the proposed rules impact employers that desire to self-insure and employers that are currently self-insured.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

Generally, these rules are an alternative option for employers who do not wish to participate in the state insurance fund. An employer that becomes self-insured is responsible for paying an assessment to the self-insuring employers' guaranty fund and must pay claims costs dollar for dollar. An employer that desires to become self-insured must meet certain requirements, most of which are outlined in O.A.C. 4123-19-03. Many of the requirements are statutorily based.

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.

Any adverse impact is difficult to quantify and is mitigated somewhat by the elective nature of the self-insurance. Generally, an employer that chooses to become self-insured performs a risk analysis and determines that self-insurance is better for the employer financially.

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

These rules generally follow statutory mandates. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the BWC will use to implement these regulations. Therefore, the regulatory intent of these rules is justified by the need for the BWC to comply with statutory mandates.

Regulatory Flexibility

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

No. Self-insuring employers are typically larger employers who have the financial ability and administrative resources to self-administer their workers' compensation claims.

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19. 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?

N/A

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

BWC rules and policies are available on <https://info.bwc.ohio.gov/wps/portal/gov/bwc>. Also, BWC has dedicated Self-Insured Department personnel available to assist stakeholders in answering workers' compensation inquiries concerning self-insurance.