

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Five Year Rule Review: Chapter 4123-19, Self-Insured Rules

Rule Number(s): 4123-19-01, 4123-19-02, 4123-19-03, 4123-19-05, 4123-19-06,
4123-19-07, 4123-19-08, 4123-19-09, 4123-19-10, 4123-19-11, 4123-19-12, 4123-19-13,
4123-19-14, 123-19-15, 4123-19-16

Date: May 11, 2012

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☐ Rescinded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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Chapter 4123-19 of the Administrative Code contains the rules relating to the General Procedures for State Insurance Fund and for Self-Insuring Employers. BWC last completed a five year rule review of these rules in 2006. BWC is proposing that eleven of the rules remain unchanged. BWC is recommending amendments to four rules as follows.

In Paragraph (A)(2) of rule 4123-19-03, BWC proposed to add new, distinct standards for BWC to waive financial requirements for public employers seeking self-insurance. The rule currently contains waiver language for private employers.

In Paragraph (H) of rule 4123-19-03, the rule contains a slight change relating to parent corporations and a contract of guaranty. The change includes 50%, where before the rule was more than 50%.

In Paragraph (N) of rule 4123-19-03, the rule clarify that a self-insured public employer is responsible to self-insure volunteer and probation claims, if the employer elects to have such employees, and that the self-insured employer is responsible for PWRE claims.

The amendments to rules 4123-19-06 and 4123-19-14 clarify the requirement that the bureau shall mail a notice of hearing to the employer and its representatives. The amendments remove the redundant language, “by regular mail.”

The amendments to rule 4123-19-15 relate to assessments for the self-insuring employers' guaranty fund. Paragraph (C)(2) is amended to indicate that BWC may require of a high risk employer appropriate security in addition to the six per cent assessment.

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

The rules in this Chapter relate to self-insured employers. The background law for these rules is in R.C. 4123.35, 4123.351, and 4123.352.

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)?

Under R.C. 4123.35, BWC has the authority to grant to an employer the privilege of self-insuring its workers' compensation claim obligations. Self-Insuring employers in workers' compensation generally, by statute, are required to have at least 500 employees, and must demonstrate the financial ability to administer a self-insured program. The statutes provide that BWC shall review the financial ability of the employer to maintain a self-insured program. In the event of a default of a self-insured employer, the obligations for the claims of that defaulting self-insured employer are the responsibility of the remaining self-insured employers. Therefore, BWC has a fiduciary duty to the state insurance fund and to the self-insuring employer community to ensure that self-insuring employers are financial able to administer and maintain a self-insured workers' compensation program.

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

Measures of the success of the self-insured regulations are the number of self-insured defaults, the adequacy and solvency of the self-insured guaranty fund, and the rate of assessments charged to self-insuring employers.

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.

During 2011, BWC shared the proposed rules with the Ohio Self Insuring Association, a trade group representing self-insuring employers. BWC also shared the rules with the Ohio Chamber of Commerce, and individual self-insuring employers.

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

BWC included the input and comments of constituents in the final regulations. For example, BWC amended rule 4123-19-03(N) to clarify concerns of self-insured public employer taxing districts on the extent of their liability for some special BWC programs. Their suggested change was to indicate that if a public employer granted the privilege of self-insurance elects to provide coverage for volunteers and probationers

performing services for the political subdivision, the employer shall include such volunteers and probationers as employees to be covered under the self-insurance policy. This coverage is optional. Their other suggested change was to clarify that a public employer's coverage of a "work-relief employee" under Chapter 4127 of the Revised Code shall be included in the public employer's self-insurance policy.

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?

None.

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?

None. The regulatory structure in the rules is supported and mandated by statute.

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?

This area is unique to BWC, so there is no regulatory duplication to other state agency regulations of these employers.

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 self-insured rules and program have been in existence a long time (since approximately 1920). The self-insured employer community is familiar with the various changes made to the rules and BWC has articulated and communicated the proposed changes in these rules to the self-insured employer community through the employers' involvement in the rule process and through notice of the changes.

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

The impacted community is current and potential self-insured employers in the Ohio workers’ compensation system. There are currently approximately 1,200 self-insured employers. As noted, these employers generally have at least 500 employees. Self-insured employers include private employers and public employer taxing districts, but do not include state agencies.

The nature of the impact of these rules is that if BWC determines that a self-insured employer needs additional security to guarantee its self-insured obligations, the employer may have some expense in providing surety or a bank letter of credit, depending on the amount and nature of the security.

There are some time consuming reporting requirements in these rules that require an amount of time and effort that varies, depending upon the employer’s number of employees, the number of the employer’s injury claims, the financial stability of the employer, and the employer’s method of record keeping and computerization.

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

BWC’s fiduciary responsibility to the self-insured community as a whole, which is financially responsible for the default of self-insured employers, justifies that BWC ensure the each individual self-insured employer is financial capable of funding a self-insured program. This regulatory impact on one employer protects all other self-insured employers.

Regulatory Flexibility

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

The regulations do not apply to small businesses; self-insured employers, are, by requirement, employers of over 500 employees.

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.