CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: **Ohio Bureau of Workers' Compensation**

Regulation/Package Title: **Miscellaneous Rules**

Rule Number(s): **Chapter 4123-19 of the Administrative Code (14 rules)**

Date: **2/3/2017**

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- ☐ **Rescinded**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.

   Chapter 4123-19 of the Administrative Code contains the rules governing self-insurance in Ohio's workers' compensation system, including the process of applying for the privilege to self-insure, procedures for renewal or revocation of self-insuring status, and the assessment for the self-insuring employers' guaranty fund. The rules of Chapter 4123-19 are due for five-year rule review under Section 119.032 of the Revised Code. The rule review date for the rules is June 1, 2017. BWC performed a five-year rule review of the rules in 2012. BWC

Legal Division reviewed the content of the rules with the Self-Insured Department, and have identified the changes to the rules indicated below.

Amended rules:

4123-19-03 Where an employer desires to secure the privilege to pay compensation, etc., directly.

4123-19-03.1 Waiver of Certain Requirements.

4123-19-05 Where an employer is a self-insuring risk and desires to become a state risk.

4123-19-06 Procedures for revocation of self-insuring status.

4123-19-08 Renewal of self-insuring risks.

4123-19-09 On regard to complaints filed by employees against self-insuring employers under the provisions of section 4123.35 of the Revised Code.

4123-19-10 In regard to audits by the bureau of workers' compensation.

4123-19-13 Self-insuring employers evaluation board.

4123-19-15 Assessment for self-insuring employers' guaranty fund.

4123-19-16 Self-insured construction projects.

No Change rules:

4123-19-01 Definition: state risks, self-insuring risks.

4123-19-11 Fixing time limits beyond which the failure of a self-insuring employer to provide for the necessary medical examinations and evaluations may not delay a decision on a claim.

4123-19-12 Grounds for holding public hearings to evaluate the program for self-insuring employers.

4123-19-14 Self-insured review panel.

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

   4123.35, 4123.351, 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.**

   n/a

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 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.

6. **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 in the ability of workers' compensation stakeholders understanding and following the rules.

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 Bureau has distributed these rules for comments to:

   • Ohio Manufacturer's Association ("OMA");

   • BWC's Self-Insured Division's employer distribution list;

   • Ohio Self-Insurance Association ("OSIA") workgroup.

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

   The Bureau received one comment from a member of the OSIA, which was "looks fine to me." No other input was received.

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?**

   n/a

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?**

These rules generally follow statutory mandates. For example, rule 4123-19-03.1, "Waiver of Certain Requirements" is based on a requirement in ORC 4123.35(B)(1)(g). The statute provides the basic parameters of the regulation; these rules inform stakeholders of the procedures and policies the Bureau will use to implement these regulations.

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.***

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

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

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

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 Bureau will post the rules on its website, www.bwc.ohio.gov, and will distribute the rules to affected parties.

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 community includes employers in the workers' compensation system. Specifically, it impacts employers that desire to self-insure and employers that are currently self-insured.

    b. Generally, these rules can be seen as an alternative option for employers rather than participating 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 claim costs dollar for dollar. An employer that desires to become self-insuring must meet certain requirements, most of which are outlined in 4123-19-03. Many of the requirements are statutorily based, and this review does not add any new requirements. Rather, a few requirements have been eliminated, either because of statutory changes or because they were unnecessary.

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

15. 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 Bureau will use to implement these regulations. Therefore, the regulatory intent of these rules is justified by the need for the Bureau to comply with statutory mandates.

Regulatory Flexibility

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

No.

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. None of these rules have provisions that would result in fines or penalties to employers.

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

Bureau rules and policies are available on www.bwc.ohio.gov. Also, BWC personnel are available to assist stakeholders in answering workers' compensation inquiries.