

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Self-Insured Rules

Rule Number(s): 4123-19-03, 4123-19-15

Date: April 1, 2013

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Rescinded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 rules relating to the State Insurance Fund and Self-Insuring Employers. BWC is proposing changes to two of the Chapter 119 rules as follows:

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In Paragraph (H) of rule 4123-19-03, BWC proposed to permit the bureau more flexibility in determining appropriate securitization requirements for self-insuring employers and their subsidiary entities.

In Paragraph (C)(1) of rule 4123-19-15, BWC proposed language to clarify that the assessment for new self-insured entities applies only to entities transferring from the State Insurance Fund (SIF) to self-insured status and does not include subsidiary additions to an already existing self-insured entity.

In Paragraph (H) of rule 4123-19-15, BWC added language permitting an entity that ceases self-insuring its workers' compensation obligations to pay phase-out assessments in a single lump sum. Any employer electing this option remains obligated to pay compensation and benefits for any claims with dates of injury during the period the employer was an SI entity.

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

The background law for these rules is in Ohio Revised Code 4123.35.

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)?

BWC has a fiduciary responsibility to the State Insurance Fund and to the self-insuring employer community to ensure that employers are able to financially and administratively able to 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?

Success is measured in the number of entities participating in self-insurance, the number and impact of self-insured defaults, the solvency of the self-insured guaranty fund, and the rate of assessments charged to self-insured employers.

Development of the Regulation

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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.

BWC shared the rules changes with the Ohio Self-Insured Association, a trade group representing self-insuring employers. The rules were also shared with the Ohio Chamber of Commerce, the Ohio Manufacturers' Association, other individual self-insured employers, and Third Party Administrators.

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

BWC included input as part of the final proposal. BWC clarified concerns by Third Party Administrators related to the proposed changes to the rules with the concern related to the potential impact the change may have on the group rating program for the July 1, 2013 policy year. To address this concern, BWC determined that any changes would be made no earlier than the July 1, 2014 policy year.

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.

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 program and thus these rules are specific to BWC.

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 community is familiar with all changes made to the current rules. BWC has sought input and has communicated the impacts of the changes to the self-insured community.

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 is current and potential self-insured employers in the state of Ohio. There are approximately 1,200 self-insured employers at this time consisting of both public and private employers. Self-Insured employers employ nearly 2 million Ohio employees.
- b. The impact of these changes should be primarily positive to self-insuring employers as it permits BWC greater flexibility and eases some requirements for eligibility, assessment and securitization requirements.
- c. There may be some additional reporting and monitoring requirements that will require additional time and effort for self-insured employers.

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

BWC has a fiduciary responsibility to ensure each employer continues to meet the self-insured requirements outlined in the Revised Code and Administrative Code. Again, the impact of these changes should be primarily positive to self-insuring employers.

Regulatory Flexibility

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

Self-insuring employers are primarily, as required, to employee over 500 employees and therefore the impact to small business would be minimal.

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?

There are no fines or penalties related to these rules.

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

BWC's self-insured department answers questions from self-insuring employers on the implementation of all self-insured rules and requirements.