

Five Year Rule Review of Chapter 4123-19 Rules:
General Procedures for State Insurance Fund; Self-Insuring Employers

(Rules without amendments indicated are recommended as no change rules)

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

(A) “State risks” are hereby defined as those employers who pay their full premium into the state insurance fund.

(B) “Self-insuring risks” are hereby defined as those employers who are of sufficient financial ability to carry their own insurance; who do not desire to insure the payment thereof, except as provided in division (B) of section 4123.82 of the Revised Code; who secure authority from the administrator of workers’ compensation to pay compensation, etc., directly; who pay into the state insurance fund an assessment as established by a rule of the bureau of workers’ compensation adopted in accordance with section 111.15 of the Revised Code; who pay to the bureau a contribution to the self-insuring employers’ guaranty fund pursuant to section 4123.351 of the Revised Code; and who provide an additional security, where required by the bureau, in the amount or form that may be specified by the bureau.

(C) “Self-insurance” is a privilege granted or denied by the administrator of workers’ compensation. Once granted the privilege of self-insurance, the employer determines the first level of a claim and must have employees with a working knowledge of current Ohio workers’ compensation law and all rules and regulations of the bureau of workers’ compensation and the industrial commission. A self-insuring employer may, without any prior order from the commission or bureau, grant or refuse to grant any claim made under the Ohio Workers’ Compensation Act. In granting a claim or awarding payment of compensation or benefits, the employer may provide to its employees compensation or benefits which are greater than those required by law. The employer may not pay compensation or benefits less than that which is required by law.

Effective Dates: 1/2/78, 2/17/81, 5/9/90, 11/19/93

4123-19-02 General procedures in the processing of applications for industrial coverage.

(A) To secure the initial quotation of rate and premium, the employer shall complete and return to the Columbus central office of the bureau of workers’ compensation an application prepared by the bureau and entitled “Application for Classification of Industry and for Premium.” Blank forms of this application will be mailed to the employer upon request to the bureau and such form(s) must be used in making such application.

(B) Upon receipt of the completed application as indicated under paragraph (A) of this rule, the bureau shall forthwith issue a premium advice and pay-in-order on the same,

setting forth the classification, rate and thirty per cent of the eight months' premium security deposit of the applicant, not to exceed one thousand dollars and not less than ten dollars.

(C) Two copies of the premium advice and pay-in-order shall be forwarded to the employer.

(D) In the event the applicant has one or more employees and intends to become a state risk, then such applicant, upon receipt of the pay-in-order, shall immediately forward such pay-in-order together with the amount of money specified therein to the treasurer of state or to the bureau of workers' compensation.

(E) The applicant's protection shall date from the time the payment of the premium security deposit is actually received by the treasurer, state of Ohio, or bureau, or the date the written binder of new coverage has been approved.

(F) Upon the receipt of the employer's premium security deposit, the accounting section shall issue forthwith to the employer a "Certificate of Premium" statement. Such statement shall certify to the employer that the employer has paid into the state insurance fund the premium due according to the law and the rules of the bureau, and that said applicant is entitled to the rights and benefits of said fund beginning from the date such insurance became effective, such date being inserted in this statement, for a period as indicated on the statement.

(G) Coverage that is extended to a person who in his household employs household worker(s) pursuant to section 4123.01 of the Revised Code does not include such person himself.

(H) Any employer who makes the semiannual premium payment at least one month prior to the last day on which such payment may be made without penalty shall be entitled to a discount at such rate as the bureau may from time to time declare.

Effective Dates: 6/30/74, 12/11/78, 11/26/79, 5/9/90

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

(A) All employers granted the privilege to pay compensation directly shall demonstrate sufficient financial strength and administrative ability to assure that all obligations under section 4123.35 of the Revised Code will be met promptly. The administrator of workers' compensation shall deny the privilege to pay compensation, etc., directly, where the employer is unable to demonstrate its ability to promptly meet all the obligations under the rules of the commission and bureau and section 4123.35 of the Revised Code. The administrator shall consider, but shall not be limited to the factors in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code where they are applicable in determining the employer's ability to meet all obligations under section 4123.35 of the Revised Code.

The administrator shall review all financial records, documents, and data necessary to provide a full financial disclosure of the employer, certified by a certified public accountant, including but not limited to, the balance sheets and a profit and loss history for the current year and the previous four years. For purposes of this rule, certified financial statements shall be construed by the administrator as audited by a certified public accountant, in accordance with generally accepted accounting principles, and shall include the certified public accountant's audit opinion.

- (1) In determining whether to grant a waiver of the requirement of division (B)(1)(e) of section 4123.35 of the Revised Code for certified financial records, the administrator shall consider the following criteria and conditions.
 - (a) The administrator shall require reviewed financial statements, including full footnote disclosure, to be prepared and submitted in accordance with generally accepted accounting principles. For the purposes of this rule, "reviewed financial statements" shall mean financial statements that have been subject to procedures performed by a certified public accountant in accordance with AICPA Professional Standards, specifically, Statements on Standards for Accounting and Review Services, Section 100, Paragraph .24 through .38, December 1978.
 - (b) The administrator may utilize the services of a commercial credit reporting bureau to assist in the evaluation of an applicant's ability to meet its workers' compensation obligations. The cost of this commercial reporting service shall be assumed by the applicant employer.
 - (c) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant employer to provide additional security to ensure meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and provided prior to the granting of self-insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self-insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code.

(2) In determining whether to grant a waiver of the requirement of division (B)(2)(b) of section 4123.35 of the Revised Code for financial statements reflecting the unreserved and undesignated year-end fund balance in the public employer's general fund, the administrator shall consider the following criteria and conditions.

- (a) The administrator may require a supplemental schedule reflecting the public employer's unreserved and undesignated year-end fund balance in the public employer's general fund.
- (b) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant public employer to provide additional security to ensure

meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and provided prior to the granting of self-insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self-insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code.

(3) In determining whether to grant a waiver of the requirement of division (B)(2)(f) of section 4123.35 of the Revised Code for an annual financial audit released by the auditor of state within seven months after the end of the public employer's fiscal year, the administrator shall consider the following criteria and conditions.

(a) The administrator may accept an annual financial audit released by the auditor of state within nine months after the end of the public employer's fiscal year.

(b) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant public employer to provide additional security to ensure meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and provided prior to the granting of self-insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self-insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code.

~~(2)~~(4) The administrator shall not grant the status of self-insuring employer to the state, except that the administrator may grant the status of self-insuring employer to a state institution of higher education, excluding its hospitals.

(B) The employer shall secure from the bureau of workers' compensation proper application form(s) for completion. The completed application shall be filed with the bureau at least ninety days prior to the effective date of the employer's requested status as a self-insurer. The administrator may require that the application be accompanied by an application fee as established by bureau resolution to cover the cost of processing the application in accordance with section 4123.35 of the Revised Code. The application shall not be deemed complete until all required information is attached thereto. Prior to presentation to the administrator, applicable items listed in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code shall be made available to the bureau and shall be reviewed by the bureau of workers' compensation. The bureau shall only accept applications which contain the required information.

(C) The bureau shall recognize only such application forms which provide answers to all questions asked and furnish such information as may be required.

- (D) Return of the completed forms required by this rule and any additional information required by the bureau to process the employer's application should be submitted at least ninety days prior to the effective date of the employer's requested status as a self-insurer.
- (1) If the administrator determines to grant the privilege of self-insurance, the bureau shall issue a "Finding of Facts" statement which has been prepared by the bureau, signed by the administrator, subject to all conditions outlined in paragraph (L)(3) of this rule.
 - (2) If the administrator determines not to grant the privilege of self-insurance, the bureau shall so notify the employer, whereupon the employer shall be required to continue to pay its full premium into the state insurance fund.
- (E) All employers that have secured the privilege to pay compensation, etc., directly, will be required to make contributions as determined by the administrator to the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code, and, if an additional security is required by the bureau, in the amount or form that may be specified by the bureau. If the additional security is in the form of a surety bond, the bond shall be from a company approved by the bureau and authorized to do business in the state of Ohio by the Ohio department of insurance. The surety bond shall be in the form prescribed by the bureau. The penal amount of such additional security is to be fixed by the administrator.
- (F) The surety bond or additional security furnished by the employer shall be for an amount and period as established by the bureau and may be periodically reviewed and reevaluated by the bureau. The surety bond or additional security shall provide on its face that the surety shall be responsible for the payment of all claims where the cause of action, as determined by the date of injury or date of occupational disease, arose during the liability of the surety bond or additional security. The liability under the surety bond or additional security and the rights and obligations of the surety shall be limited to reimbursement for the amounts paid from the surplus accounts of the state insurance fund by reason of the default of the self-insuring employer in accordance with division (B) of section 4123.82 of the Revised Code; however, in the event of such self-insuring employer's default, the bureau shall first seek reimbursement from the surety bond or additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code. Upon default of the self-insuring employer, it shall be the responsibility of the administrator of the bureau of workers' compensation to represent the interests of the state insurance fund and the self-insuring employers' guaranty fund. The administrator, on behalf of the self-insuring employers' guaranty fund, has the rights of reimbursement and subrogation and shall collect from a defaulting self-insuring employer or other liable person all amounts the bureau has paid or reasonably expects to pay from the guaranty fund on account of the defaulting self-insuring employer.
- (G) The security herein required to be given by the employer shall be given to the state of Ohio, for the benefit of the disabled or the dependents of killed employees of the

employer filing the same, and shall be conditioned for the payment by the employer of such compensation to disabled employees or the dependents of killed employees of such employer, and the furnishing to them of medical, surgical, nursing and hospital attention and services, medicines and funeral expenses equal to or greater than is provided by the Ohio workers' compensation law and for the full compliance with the rules and regulations of the commission and bureau and rules of procedure.

- (H) If another or parent corporation or entity owns ~~more than~~ fifty per cent or more of the stock of an employer, such employer must furnish a contract of guaranty executed by the ultimate domestic parent corporation or entity. If the employer establishes to the bureau that such contract of guaranty cannot be given by the ultimate domestic parent corporation, then the bureau may, in its discretion, waive the requirement of a contract of guaranty. The bureau may require an alternative form of security.
- (I) From the effective date of this rule, employees having one or more years of experience as a workers' compensation administrator for a self-insuring employer in Ohio shall be deemed sufficiently competent and knowledgeable to administer a program of self-insurance. Those self-insuring employers that employ workers' compensation administrators who have less than one year of experience as a workers' compensation administrator in Ohio shall not have its status as a self-insuring employer affected pending notification by bureau of workers' compensation as to whether mandatory attendance of the administrator at a bureau of workers' compensation training program is required. If the bureau determines that the administrator is not able to administer a self-insuring program, the bureau may direct mandatory attendance of the administrator at a bureau of workers' compensation training program until such time as the bureau determines that the administrator is sufficiently competent and knowledgeable to run such a workers' compensation program. The cost of the bureau's training of the administrator(s) under this rule will be borne by the self-insuring employer or self-insuring employer applicant. By accepting the privilege of self-insurance, an employer acknowledges that the ultimate responsibility for the administration of workers' compensation claims in accordance with the law and rules of the bureau of workers' compensation and the commission rests with that employer. The self-insuring employer's records and compliance with the bureau of workers' compensation and commission rules shall be subject to periodic audit by the bureau of workers' compensation.

A self-insuring employer or applicant shall designate one of its Ohio employees who is knowledgeable and experienced with the requirements of the Ohio Workers' Compensation Act and rules and regulations therein, as administrator of its self-insuring program. The requirement for an Ohio administrator may be waived at the discretion of the bureau. The name and telephone number of the Ohio administrator, or non-Ohio administrator where the Ohio requisite has been waived, shall be posted by the employer in a prominent place at all the employer's locations. The administrator's duties shall include, but not be limited to:

- (1) Acting as liaison between the employer, the bureau of workers' compensation and the commission, and providing information to the agency upon request;

- (2) Providing assistance to claimants in the filing of claims and applications for benefits;
- (3) Providing information to claimants regarding the processing of claims and the benefits to which claimants may be entitled;
- (4) Providing the various forms to be used in seeking compensation or benefits;
- (5) Accepting or rejecting claims for benefits;
- (6) Approving the payment of compensation and benefits to, or on behalf of, claimants, pursuant to paragraph (K) of this rule.

This rule is not intended to prevent the hiring of an attorney or representative to assist the employer in the handling and processing of workers' compensation claims.

- (J) Employers that are granted the privilege of paying compensation, etc., directly, in accordance with these rules and regulations shall file with the bureau a report of paid compensation annually, shall keep a record of all injuries and occupational diseases resulting in more than seven days of temporary total disability or death occurring to its employees and report the same to the bureau upon forms to be furnished by it, and shall observe all the rules and regulations of the commission and bureau and their rules of procedure with reference to determining the amount of compensation, etc., due to the disabled employee or the dependents of killed employees, and payment of the same. All employers granted the privilege of paying compensation, etc., directly shall annually report paid compensation electronically via the bureau's website.

If a self-insured employer fails to timely file its annual report of paid compensation, the bureau may estimate the amount of paid compensation and assess the employer based on this estimate pursuant to rule 4123-17-32 of the Administrative Code. If the employer subsequently provides the bureau with actual paid compensation figures, the bureau shall adjust the paid compensation and any assessment accordingly. A self-insured employer that is no longer a self-insured employer in Ohio and has failed to timely file a report of paid compensation shall be subject to this rule.

- (K) Minimal level of performance as a criterion for granting and maintaining the privilege to pay compensation directly.

- (1) The employer must be able to furnish or make arrangements for reasonable medical services during all working hours. A written explanation of what arrangements have been made or will be made to provide medical treatment shall be supplied with the application for self-insurance.

For an employer desiring to be first granted the privilege of self-insured status on or after the effective date of this rule, the employer shall provide to the bureau for the bureau's approval the employer's plan for the following:

- (a) Criteria for the selective contracting of health care providers;

- (b) Plan structure and financial stability for the medical management of claims;
 - (c) Procedures for the resolution of medical disputes between an employee and the employer, an employee and a provider, or the employer and a provider, prior to an appeal under section 4123.511 of the Revised Code;
 - (d) Upon the request of the bureau, provide a timely and accurate method of reporting to the administrator necessary information regarding medical and health care service and supply costs, quality, and utilization; and,
 - (e) Provide an employee the right to change health care providers.
- (2) The employer shall promptly pay the fees of outside medical specialists to whom the commission or bureau shall refer claimants for examination or where the commission or bureau refers the claim file for review and opinion by such specialist except as provided by law in cases where the claim was subsequently disallowed. Such fees shall be paid within the time limits provided for payment of medical bills under paragraph (K)(5) of this rule.
- (3) Every employer shall keep a record of all injuries and occupational diseases resulting in more than seven days of total disability or death as well as all contested or denied claims and shall report them to the bureau, and to the employee or the claimant's surviving dependents in accordance with rule 4123-3-03 of the Administrative Code.
- (4) The employer shall provide to the claimant and upon request, shall file with the bureau or the commission, medical reports relating thereto and received by it from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease, or any injury or occupational disease for which a claim has been filed. The claimant shall provide to the employer and, upon request, shall file with the bureau or the commission, medical reports relating thereto and received from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease or any injury or occupational disease for which a claim has been filed. The claimant shall honor the employer's request for appropriate written authorization to obtain medical reports to the extent that such reports pertain to the claim.
- (5) Within thirty days after receipt of a hospital, medical, nursing or medication bill duly incurred by the claimant, the employer shall either pay such bill, or if the employer contests any of such matters, shall notify the provider, the employee, and, only upon request, the bureau or commission in writing. Such written notice shall specifically state the reason for nonpayment. The employer's notification to the employee shall indicate that the employee has the right to request a hearing before the industrial commission. If the self-insuring employer allows a claim for benefits or compensation without a hearing or if the matter is heard by the industrial commission, the employer shall pay such benefits or compensation no later than twenty-one days from acquiring knowledge of the claim or the

claimant's filing of the C-84 form, whichever is later, or no later than twenty-one days from the employer's receipt of the industrial commission order as provided by section 4123.511 of the Revised Code; provided that where the claimant is subject to a withholding order for support and the self-insuring employer is required to provide notice to the claimant's attorney pursuant to section 3121.0311 of the Revised Code, the time for the employer to pay such compensation is extended pursuant to section 3121.0311 of the Revised Code. The employer shall approve a written request for a change of physicians within seven days of receipt of such request that includes the name of the physician and proposed treatment. The employer shall approve or deny a written request for treatment within ten days of the receipt of the request. If the employer fails to respond to the request, the authorization for treatment shall be deemed granted and payment shall be made within thirty days of receipt of the bill.

- (6) The employer shall make its records and facilities available to the employees of the bureau at all reasonable times during regular business hours. A public employer shall make the reports required by section 4123.353 of the Revised Code available for inspection by the administrator of workers' compensation and any other person at all reasonable times during regular business hours.
- (7) The employer shall pay all compensation as required by the workers' compensation laws of the state of Ohio. By becoming self-insuring, the employer agrees to abide by the rules and regulations of the bureau and commission and further agrees to pay compensation and benefits subject to the provisions of these rules. The self-insuring employer shall proceed to make payment of compensation or medical benefits without any previous order from the bureau or commission and shall start such payments as required under the Workers' Compensation Act, unless it contests the claim.
- (8) The employer may notify the medical section and the claimant at least sixty days prior to the completion of the payment of two hundred weeks of compensation for temporary total disability with the request that the claimant be scheduled for examination by the medical section. Payment of temporary total disability compensation after two hundred weeks shall continue uninterrupted until further order of the commission up to the maximum required by law, unless the claimant has returned to work, or the treating physician has made a written statement that the claimant is capable of returning to his former position of employment or has reached maximum medical improvement or that the disability has become permanent, or, after hearing, an order is issued approving the termination of temporary total disability compensation.
- (9) Upon written request by the claimant or claimant's representative, the employer shall make available for review all the employer's records pertaining to the claim. Such review is to be made at a reasonable time (not to exceed seventy-two hours) and place. The claimant, upon written request, shall provide the employer or its representative with an appropriate written authorization to obtain medical reports and records pertaining to the claim.

Except as provided for in this rule, an employer may not assess a fee or charge the claimant or the claimant's representative for the cost of providing a copy of the employer's records pertaining to the claim. Where the employer has previously provided a copy of the record or records pertaining to the claim to the claimant or the claimant's representative, the employer may charge a fee for the copies. The employer's fee shall be based upon the actual cost of furnishing such copies, not to exceed twenty-five cents per page.

- (10) The employer shall inform a claimant, and the bureau of workers' compensation, in writing, within thirty days from the filing of the claim, as to what conditions it has recognized as related to the injury or occupational disease and what, if any, it has denied. The same timeframe shall apply when the employer rejects a medical only claim.
 - (11) The employer shall post notices of its self-insuring status indicating the location in the plant(s) for the filing of a claim and the job title and department of the employees designated by the employer to be the person or persons responsible for the processing of workers' compensation claims.
 - (12) A public employer, except for a board of county commissioners described in division (G) of section 4123.01 of the Revised Code, a board of a county hospital, or a publicly owned utility, who is granted the status of self-insuring employer pursuant to section 4123.35 of the Revised Code shall comply with the section 4123.353 of the Revised Code.
- (L) If a state insurance fund employer or a succeeding employer, as described in rule 4123-17-02 of the Administrative Code, applies for the privilege of paying compensation, etc., directly, by transferring from state fund to self-insurance, the actuary of the bureau shall determine the amount of the liability of such employer to the bureau for its proportionate share of any deficit in the fund. To determine an employer's liability under this rule, the actuary of the bureau shall develop a set of factors to be applied to the pure premium paid by an employer on payroll for a seven year period, as described below. The factors shall be based on the full past experience of the commission and bureau as reflected in the most recent calendar year end audited combined financial statement of the commission and bureau, and shall also accommodate any projected change in the financial condition of the fund for the current calendar year, or any additional period for which an audited combined financial statement is unavailable. The factors shall be revised annually effective July first based on the most recent calendar year audited combined financial statement and the projected change in the financial condition of the fund in the current calendar year or any additional period for which an audited combined financial statement is unavailable. The annually revised factors shall be adopted by rule 4123-17-40 of the Administrative Code, and filed with the secretary of state and the legislative service commission at least ten days prior to July first of each year. Factors effective July first of each year shall apply to all applications for self-insurance filed on or after July first of that year through June thirtieth of the following year. The revised factors shall be applied to the pure premium paid by the employer on payroll for the seven calendar accident years ending December thirty-first of the year preceding the year in

which the factors are adopted under rule 4123-17-40 of the Administrative Code. In the event the audited combined financial statement of the commission and bureau reveals that no deficit exists, or in the event the application of the factors adopted by rule 4123-17-40 of the Administrative Code yields a negative number, the employer will incur no liability under this paragraph, but will not receive any refund for prior premiums paid except for those matters specifically addressed in paragraph (L)(2) of this rule. As used in this rule, "pure premium paid" means premiums actually paid under a base rating plan or an experience rating plan and minimum premium paid under a retrospective rating plan. It does not include premiums billed for actual claims costs, including reserves at the end of ten years, under a retrospective rating plan. Obligations under a retrospective rating plan remain the responsibility of the employer regardless of the employer's status. The same principles shall apply to cases of a merger by a self-insuring employer and a state fund employer under the self-insurer's status. In addition, the provisions listed below shall apply:

- (1) Within thirty days of the receipt from the employer of the necessary forms and of a separate statement of assets and liabilities, the bureau will forward to the employer a letter stating the amount of liability (if any) due the state fund as outlined above and a copy of the computation of such liability (if any).
- (2) Within thirty days of the date of mailing of the letter by the bureau as outlined in paragraph (L)(1) of this rule, the employer shall reply by a letter, signed in handwriting, acknowledging that the employer agrees with the amount of liability specified in the letter and that there are no protests or claims hearings pending which could affect the amount of the liability. If any such matters are pending and would affect the liability, they must be detailed and set forth in the letter from the employer. This letter must also acknowledge that any protest letters, applications for handicap reimbursement or other requests affecting the risk's state fund experience filed subsequent to the date of this letter shall be considered invalid for both rebate of premium on state fund experience and the calculation of liability cited above. This letter must also specify the suggested effective date of the transfer to self-insurance which the employer requests, subject to paragraph (B) of this rule which requires that the effective date must be at least ninety days after the date the application forms are received by the bureau. Failure to comply with the requirements set forth herein shall terminate further consideration of the application.
- (3) Subsequent to the approval of the employer's self-insurance status and the effective date thereof by the administrator, the bureau shall issue a settlement sheet statement containing the adjustment required above and billing for an advance deposit as required by other rules of the commission. The employer shall pay the amounts required by this paragraph, pay the contribution to the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code, submit a performance surety bond or additional security, if required by the bureau, and estimated final payroll report as a state fund risk, all within thirty days of the date of the mailing of the self-insured certificate.

- (4) The final adjustments of all premiums due the state fund for the final payroll reports and final bureau audit (if any), as well as the pending protests, etc., as specified in paragraph (L)(2) of this rule, shall all be settled and paid within six months from the date of transfer from state fund to self-insuring status. Employer's records must be made available promptly for final audit which must also be completed within six months from the date of the transfer from state risk to self-insurance.
- (M) If there is any change involving additions, mergers, or deletions of entities or ownership changes of a self-insuring employer, which would materially affect the administration of the employer's self-insuring employer program or the number of employees included in such program, the employer shall notify the bureau self-insuring employer's section within thirty days after the change occurs. Based upon the information provided or additional information requested by the bureau, the bureau will determine the effect of the change on the employer's self-insuring employer status, the adequacy of the employer's contribution to the self-insuring employers' guaranty fund, and the need for additional security.
- (N) ~~Public employers~~ If a public employer granted the privilege of self-insurance ~~shall include~~ 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. 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.

Prior Effective Dates: 7/1/76, 1/2/78, 12/11/78, 11/26/79, 2/17/81, 9/3/85, 8/22/86 (Emer.), 11/17/86 (Emer.), 1/10/87, 7/16/90, 11/23/92 (Emer.), 2/22/93, 12/17/01, 11/14/03, 10/30/06, 8/15/07

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

- (A) Where an employer that is a self-insuring risk desires to become a state risk, the employer transferring from a self-insuring risk to a state risk shall be rated at the appropriate experience modifier to the employer's basic premium rate. Such a rate shall be determined pursuant to section 4123.29 of the Revised Code.
- (B) The adjustment of the self-insurance premium of such employer shall be computed on an earned premium basis as of the date of transfer from self-insurance to the state fund, which adjustment shall be controlled by the rules controlling the ordinary premium adjustment.
- (C) A self-insuring employer that transfers to the state insurance fund shall continue to administer self-insured claims for dates of injury, disease, or death during the period of self-insurance, and the employer shall be responsible to continue to pay compensation and benefits directly. Further, the employer shall remain obligated to pay to the bureau the self-insuring employer assessment calculated on the basis of the paid compensation

for such claims attributable to the individual self-insuring employer according to the provisions of division (I) of section 4123.35 of the Revised Code and a rule of the bureau of workers' compensation adopted in accordance with section 111.15 of the Revised Code.

Effective Dates: 7/1/62, 8/22/86 (Emer.), 11/17/86 (Emer.), 1/10/87, 5/9/90, 12/17/01

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

- (A) The bureau may direct that a public hearing be held on the question of revocation of a self-insuring employer's privilege of self-insurance if the employer that has elected with the approval of the bureau to pay compensation, etc., directly thereafter fails in any one of the following:
- (1) Continued failure to file medical reports requested by the bureau or industrial commission or to submit reports to the injured worker required under law or rule;
 - (2) Continued failure to pay compensation or benefits in accordance with any law or bureau or commission rules in a timely manner;
 - (3) Failure to provide reasonable medical facilities;
 - (4) Continued failure to pay all costs of administration including fees of medical specialists to whom the commission or bureau refers claimants for physical examinations or refers claim files for review and opinion, or failure to pay claimant's travel expenses within thirty days as required by law or rule;
 - (5) Continued failure to keep a record of all injuries and occupational diseases resulting in more than seven days of temporary total disability or death or involving seven days or less of lost time where it appears that there will be permanent partial disability compensable under division (B) of section 4123.57 of the Revised Code, or where the employer denies the claim, and to report the same to the bureau, and to furnish a copy of such report to the employee it concerns or to his surviving dependents;
 - (6) Continued failure to pay compensation within three weeks or benefits including failure to respond to a written request for authorization to change physicians within seven days, failure to approve or deny a written request for treatment within ten days, failure to pay hospital, medical, nursing, or medication bills duly incurred by the claimant within the period of thirty days after receipt of a fee bill, unless the employer contests any of such matters, in which event the employer shall promptly notify the employee in writing, as well as the provider, for requests to change physicians or for treatment requests of for fee bill, and, only upon request, the bureau or the industrial commission of such contest, specifically stating the reason for contesting such matter, and notifying the employee of the right to request a hearing before the industrial commission;
 - (7) Failure to make its records and facilities available to employees of the bureau;

- (8) Repeated failure to permit a claimant, his dependents or the representatives of either, to review all of the employer's medical records pertaining to the claim at all reasonable times and places within seventy-two hours of receiving a request;
 - (9) Repeated failure to inform a claimant or his dependents and the bureau of workers' compensation, in writing, as to what conditions it has recognized as related to his injury or occupational disease and what, if any, conditions it denies;
 - (10) Harassing, dismissing or disciplining employees who have made complaints to the bureau;
 - (11) Failure to pay contributions to the self-insuring employers' guaranty fund as set forth in section 4123.351 of the Revised Code; or,
 - (12) Repeated failure to comply strictly with any rule, regulation or order prescribed by the commission and bureau.
- (B) Should the bureau have reason to believe that the self-insuring employer has failed to comply with any of the matters listed in paragraph (A) of this rule involving the employer's financial strength or administrative ability to meet its obligations as a self-insuring employer, the bureau shall refer the matter for a public hearing on the question of revocation of the employer's privilege of self-insurance. Such public hearing shall be conducted before the self-insured review panel in accordance with the provisions of rule 4123-19-14 of the Administrative Code for issues involving the financial strength or the administrative ability of the employer to operate a self-insured workers' compensation program. The public hearing shall be conducted before the self-insuring employers evaluation board in accordance with the provisions of rule 4123-19-13 of the Administrative Code for issues involving unresolved complaints by injured workers or allegations of misconduct by the self-insuring employer.
- (C) The employer and its representative shall be notified in writing that such a public hearing will be held and shall be furnished with copies of any complaint of an employee or report from the employees of the bureau. For matters to be heard before the self-insured review panel, the bureau shall mail a notice of hearing to the employer and its representatives ~~by regular mail~~, setting forth the date, time, and place of the hearing not less than twenty one days before such hearing. For matters to be heard before the self insured employers evaluation board, the bureau shall mail a notice of the hearing to the claimant and the claimant's representative if the issue is a complaint. The notice shall be mailed not less than fourteen days before such hearing.
- (D) At the hearing the testimony given shall be taken by a court reporter and copies of the transcript of such testimony shall be furnished to the self-insuring employer, the complaining claimant, their representatives, the administrator and the members of the self-insured review panel or the self-insuring employers evaluation board.
- (1) Should the self-insured review panel find that the self-insuring employer has materially violated any parts of this rule or is incapable of operating a self-

insuring program, or refuses to conform to the rules and regulations of the industrial commission and bureau, then the administrator will forthwith issue a revocation of authority to pay compensation, etc., directly.

- (2) Should the self-insuring employers evaluation board recommend to the administrator that an employer's privilege of self-insurance be revoked, the administrator shall promptly and fully implement such recommendation without further hearing.
 - (3) An employer that has been revoked pursuant to paragraph (D)(1) or (D)(2) of this rule shall be required to pay forthwith its eight months' advance estimated premium into the state insurance fund.
- (E) The bureau may, at its discretion and after proper hearing, revoke the self-insuring status of a unit of a parent company when the evidence presented at the hearing clearly shows that the unit is operating at a different location from the parent company, and its actions causing the revocation were not directed nor authorized by the parent company.

Effective Dates: 1/2/78, 1/10/87, 7/16/90, 11/19/93, 12/17/01, 10/30/06

4123-19-07 Rules controlling renewals and discontinuances of employer coverage.

- (A) One week prior to the date of expiration of insurance of each private employer the bureau shall issue to each such employer a "Payroll Report" form.
- (B) The employer shall, within one month from the date of expiration of his last six months' insurance period, complete and return the payroll report to the bureau with premium remittance.
- (C) If, within two months immediately after the expiration of the six months' period, an employer fails to file a report of the employer's actual payroll expenditures for the period, the premium found to be due from such employer for the period shall be increased in an amount equal to one per cent of the premium, but the increase shall not be less than three dollars nor more than fifteen dollars.
- (D) The premium determined by the bureau to be due from an employer shall be payable on or before the end of the coverage period established by the premium security deposit, or within the time specified by the bureau if the period for which the advance premium has been paid is less than eight months. If an employer fails to pay such premium when due, the administrator may add a late penalty of not more than thirty dollars to the premium, plus an additional penalty as follow:
 - (1) For a premium from sixty-one to ninety days past due, the prime interest rate, multiplied by the premium due;

- (2) For a premium from ninety-one to one hundred twenty days past due, the prime interest rate plus two per cent, multiplied by the premium due;
- (3) For a premium from one hundred twenty-one to one hundred fifty days past due, the prime interest rate plus four per cent, multiplied by the premium due;
- (4) For a premium from one hundred fifty-one to one hundred eighty days past due, the prime interest rate plus six per cent, multiplied by the premium due;
- (5) For a premium from one hundred eighty-one to two hundred ten days past due, the prime interest rate plus eight per cent, multiplied by the premium due;
- (6) For each additional thirty-day period or portion thereof that a premium remains past due after it has remained past due for more than two hundred ten days, the prime interest rate plus eight per cent, multiplied by the premium due.
- (E) Notwithstanding the interest rates specified in paragraph (D) of this rule, at no time shall the additional penalty amount assessed under paragraph (D) of this rule exceed fifteen per cent of the premium due.

For purposes of paragraph (D) of this rule, “prime interest rate” means the average bank prime rate, which the administrator shall determine in the same manner as a county auditor determines the average bank prime rate under section 929.02 of the Revised Code. The bureau will utilize statistical release H.15, “selected interest rates,” a weekly publication of the federal reserve board, to recalculate semiannually the prime interest rate for purposes of a late fee penalty or additional penalty under this rule.

- (F) An employer may appeal a late fee penalty or additional penalty to the bureau’s adjudicating committee pursuant to section 4123.291 of the Revised Code.
- (G) Any deficiencies in amounts of premium security deposit paid by an employer for any period or periods shall be subject to an interest charge of six per cent per annum from the respective dates of the notice by the bureau to the employer of such deficiency in the premium security deposit. In determining the interest due on deficiencies in premium security deposit payments, a charge in each case shall be made against the employer in a sum equal to interest at the rate of six per cent per annum on the premium security deposit due but remaining unpaid sixty days after notice by the bureau.
- (H) Any interest charges or penalties provided for in paragraphs (D) and (G) of this rule and paid, shall be credited to the employer’s account for rating purposes in the same manner as premium.
- (I) The amount of premium due from such employer may be certified to the attorney general for collection.

(J) The question of classification or rating shall not be permitted to operate so as to delay the making of premium payment.

(K) When the employer has paid its adjustments and renewal premium to the bureau, the bureau shall forthwith issue to such an employer a "Certificate of Premium Payment," which certificate shall set forth the renewal, effective and expiration dates of coverage for the employer.

(L) For an employer defined in division (I)(1) of section 4123.32 of the Revised Code, payment of premium is due in accordance with the schedule established under division (B) of section 4123.41 of the Revised Code. Where such employer fails to pay at least forty-five per cent of the premium due by May fifteenth or the full premium due by September first, the bureau may impose an interest penalty for late payment for any amount due for each month or part of a month past due as scheduled at the interest rate established by the state tax commissioner pursuant to section 5703.47 of the Revised Code.

(1) When an employer as defined by division (I)(1) of section 4123.32 of the Revised Code has paid its adjustments and renewal premium to the bureau, the bureau shall forthwith issue to such an employer a "Certificate of Premium Payment," which certificate shall set forth the renewal, effective, and expiration dates of coverage for the employer.

(2) When an employer as defined by division (I)(1) of section 4123.32 of the Revised Code has failed to pay at least forty-five per cent of the premium due by May fifteenth or the full premium due by September first, the bureau may discontinue the employer's coverage. In the event of a discontinuance of the employer's coverage, the employer shall be considered a non-complying employer.

Effective Dates: 7/1/71, 8/19/77, 12/11/78, 11/26/79, 5/9/90, 12/14/92, 10/30/06, 5/15/08

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

(A) The privilege of an employer to pay compensation, etc., directly, must be renewed annually. Beginning with the effective date of this rule, prior to renewal of the employer's privilege of self-insurance, the bureau shall re-evaluate the employer's financial strength and administrative ability as described in rule 4123-19-03 of the Administrative Code. The bureau will consider past performance of the self-insuring employer as an additional factor in determining whether to renew the privilege of self-insurance. The five-hundred employee requirement in division (B)(1) of section 4123.35 of the Revised Code will not be considered mandatory in the case of an employer seeking to renew its privilege of self-insurance. Waivers granted for good cause by the administrator pursuant to paragraph (H) of rule 4123-19-03 of the Administrative Code will continue in effect indefinitely unless there is a significant change, in the opinion of the bureau of workers' compensation.

(B) Self-insuring risks desiring to continue paying compensation, etc., directly, shall secure from the bureau a copy of the appropriate form of application which shall be completed and returned to the bureau. The employer may also be required to include a reporting of the amount of payments made and the amount of reserves established for the aforementioned claims as sufficient to cover future liabilities. The properly completed renewal forms shall be signed by the Ohio self-insuring program administrator who has been designated by the employer to the bureau or an officer of the company and filed ninety days prior to the renewal date.

(C) The application forms and the employer's financial statement shall be reviewed by the bureau. In order to renew its status as a self-insuring employer, the employer shall establish the following to the bureau's satisfaction: that the employer has fulfilled the minimal level of performance standards that an employer is required to meet before being granted permission to pay compensation and benefits directly, as provided in paragraph (K) of rule 4123-19-03 of the Administrative Code; that the employer has substantially resolved all outstanding complaints filed with the bureau; and that the employer has achieved a satisfactory rating in its most recent audit report. Upon compliance with these requirements, the administrator may approve the renewal application. If the application is granted, the bureau will so notify the applicant within thirty days prior to the renewal date. In this notification, the bureau shall specify the contribution to the self-insuring employers' guaranty fund and the amount of the additional security, if required.

(D) If the aforesaid employer, upon receipt of such notification, promptly provides the bureau with the security in the amount and form specified by the bureau, the bureau thereafter will issue said employer a revised "Findings of Facts" statement and certificate which will be sent to the risk by the bureau.

(E) In the event the bureau finds that the minimum criteria set forth in the rules have not been met, the bureau shall give written notice to the applicant that the privilege to pay compensation, etc., directly, will not be renewed. Said notice shall give the employer two weeks to exercise the right to a public hearing before the self-insured review panel, in accordance with the provisions of rule 4123-19-14 of the Administrative Code. If no hearing is requested or if the self-insured review panel or, on appeal, the administrator upholds the non-renewal, the applicant shall forthwith be required to pay its full premium into the state insurance fund for the intervening period from the date of the expiration of the last renewal date to the date of the order of non-renewal issued by the self-insured review panel or the administrator, or to obtain a binder for state fund coverage as of the expiration date of its last renewal.

(F) If, for any reason, the self-insuring risk is not renewed and said risk does not pay its premium security deposit for the ensuing period into the state insurance fund or obtain a binder for state fund coverage as of the expiration date of its last renewal, said risk shall be deemed an amenable but noncomplying employer pursuant to sections 4123.01 to 4123.99 of the Revised Code.

(G) If, for any reason, it is not possible to finally pass on the employer's application for renewal prior to the expiration of its present authorization, an extension may be granted until such time as the final disposition of the application for renewal can be made.

Effective Dates: 7/1/62, 1/2/78, 11/26/79, 2/17/81, 9/3/85, 7/16/90, 11/19/93, 12/17/01, 10/30/06

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

(A) The bureau shall receive all complaints concerning any employer engaged in paying compensation directly to its employees. The bureau shall transfer to the self-insuring employers evaluation board only those complaints which are not resolved. An employer shall respond in writing to a complaint within fourteen days of receipt thereof, and the employer's response shall be made a part of the complaint file.

(B) The administrator of the bureau of workers' compensation shall investigate and process all complaints against a self-insuring employer through the self-insuring employers section of the bureau. However, the bureau may dismiss a complaint based upon the employer's action or lack of action with respect to events that occurred more than two years prior to the filing of the complaint, unless the facts could not have been reasonably known to the claimant.

(C) The bureau shall maintain a file by employers of all complaints that relate to the employer, together with any information filed by the employer as to such complaints. A copy of all complaints shall become a part of the self-insuring employer's record file and shall be available at the time of renewal consideration. The bureau shall evaluate each complaint and take appropriate action as follows:

(1) If the bureau records for such employee does not contain full information as to the matter which is the subject of the complaint, the bureau may attempt to obtain such information by correspondence with the self-insuring employer, the claimant, and their authorized representatives, if any.

(2) The bureau may also audit the program of the employer in the manner provided in section 4123.35 of the Revised Code.

(D) Following receipt of all necessary information, including bureau records, correspondence from the employee and the employer, or an audit by the bureau of workers' compensation, the bureau may dismiss the complaint as invalid or find that the complaint has been resolved. Any unresolved complaint against a self-insuring employer shall be referred to the self-insuring employers evaluation board for further action in accordance with the provisions of rule 4123-19-13 of the Administrative Code. If the bureau determines that a complaint is invalid or resolved and decides not to present the complaint to the self-insuring employers evaluation board, the claimant may request that

the complaint be presented to the administrator or the self insuring employers evaluation board for further consideration.

(E) Complaints referred to the bureau as provided above shall be retained in the employer's file for the period of four years from the date of resolution.

(F) No employer that elects to pay compensation directly shall harass, dismiss or otherwise discipline any employee for making a complaint. Upon receipt of this information that such harassment, dismissal or other disciplinary action has been taken, the bureau shall assign the matter for hearing pursuant to the provisions of rule 4123-19-13 of the Administrative Code before the members of the self-insuring employers evaluation board. If the board finds that such employer is guilty of harassing, dismissing or otherwise disciplining the claimant for making the complaint, the board shall levy a reasonable financial penalty under the circumstances as the board deems appropriate, payable by the employer to the surplus fund.

(G) Repeated violations of this rule shall be grounds for revocation of the employer's privilege to pay compensation, etc., directly.

Effective Dates: 1/2/78, 8/22/86 (Emer.), 11/8/86, 5/9/90, 12/17/01, 8/8/03, 10/30/06

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

(A) The bureau of workers' compensation shall audit the programs of employers who elect to pay compensation directly in the following situations:

(1) Audit shall be conducted by the bureau on a random basis.

(2) In addition, the bureau shall make such audits whenever the bureau has grounds for believing that an employer is not in full compliance with the rules of the commission or the provisions of Chapter 4123. of the Revised Code.

(3) Upon request from the self-insured review panel or the self-insuring employers evaluation board.

(B) Such audits shall include the employer's methods of furnishing medical, surgical, nursing and hospital attention services, medicines and funeral expenses; the employer's payment of compensation or benefits to claimants and dependents and whether this is being done in a proper and timely manner; whether the employer has promptly filed all reports required under the rules of the commission and bureau and the provisions of Chapter 4123. of the Revised Code. Such audits may also be used to evaluate whether the employer is providing medical examinations and evaluations in a timely manner; and whether the employer has harassed, dismissed or otherwise disciplined employees who have filed complaints against such employer with the bureau of workers' compensation.

(C) The bureau shall report its findings on such audits to the employer, the self-insured review panel, or the self-insuring employers evaluation board, where the panel or board had requested the audit, and shall evaluate such findings and take such action as is indicated.

Effective Dates: 1/2/78, 5/9/90, 12/17/01, 10/30/06

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.

(A) When a self-insuring employer has provided or arranged for a necessary medical examination or evaluation, in accordance with paragraph (A) of rule 4121-03-09 of the Administrative Code it shall promptly notify the commission that it has done so.

(B) Failure of a self-insuring employer to provide for or arrange for the scheduling of such necessary medical examinations and evaluations within the period of fifteen days from the notification shall not delay a decision in claim.

Effective Dates: 1/2/78, 5/9/90, 12/17/01, 10/30/06

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

The administrator of workers' compensation shall hold a public hearing to evaluate the program for self-insuring employers in the following situations:

(A) If there has been a substantial amendment of the statutes relating to self-insuring employers.

(B) If decisions are rendered by the supreme court of Ohio which materially change the interpretation of such statutes or invalidate material portions of the rules of the industrial commission or the bureau of workers' compensation.

(C) If there is substantial evidence that the self-insuring employers are not complying with the laws of the state of Ohio, the rules and procedures of the bureau of workers' compensation and the industrial commission.

Effective Dates: 1/2/78; 5/9/90

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

(A) Section 4123.352 of the Revised Code establishes a self-insuring employers evaluation board. The board shall consist of three members:

- (1) The member of the industrial commission representing the public shall serve, ex officio, as chairman.
 - (2) A member of the "Ohio Self-Insurers Association" shall be appointed by the governor with the advice and consent of the senate.
 - (3) A member of labor shall be appointed by the governor with the advice and consent of the senate.
 - (4) Not more than two of the members shall be of the same party.
 - (5) For purposes of administration, the board shall be part of the bureau of workers' compensation. The bureau shall furnish the necessary office space, staff and supplies. The board shall meet as the board determines or as requested by the bureau.
- (B) All unresolved complaints or allegations of misconduct against a self-insuring employer shall be referred to the board by the bureau. At the claimant's request, the board may elect to hear a complaint that had been dismissed by the bureau.
- (1) The board shall investigate and may order the employer to take corrective action in accordance with such schedule as the board fixes.
 - (2) A board determination need not be made by formal hearing but must be issued in written form and contain the signatures of at least two members.
 - (3) If after a hearing pursuant to Chapter 119. of the Revised Code and rules of the commission and bureau, the board determines an employer has failed to correct deficiencies within the time fixed by the board, or is otherwise violating Chapter 4123. of the Revised Code or the rules of the industrial commission or the bureau of workers' compensation, the board shall recommend to the administrator:
 - (a) Revocation of employer's privilege of self-insurance;
 - (b) Probation;
 - (c) A civil penalty not to exceed ten thousand dollars for each violation of the law or rules, payable into the self-insuring employers' surety bond fund; or
 - (d) Any other appropriate penalty.
 - (4) A board recommendation to revoke an employer's privilege of self-insurance must be by unanimous vote.
 - (5) A penalty other than revocation shall be by majority vote of the board and will be the responsibility of the bureau to monitor for compliance.

(6) The bureau shall promptly and fully implement recommendations from the board for disciplining a self-insuring employer.

Effective Dates: 8/22/86 (Emer.); 11/17/86 (Emer.); 1/10/87; 5/9/90; 12/17/01

4123-19-14 Self-insured review panel.

- (A) The administrator of the bureau of workers' compensation may delegate the authority granted to the administrator under Chapters 4121. and 4123. of the Revised Code for determining self-insuring employer matters as may be authorized. For this purpose, the administrator may appoint a self-insured review panel to provide advice to the administrator and the bureau's self-insured department and provide employers with hearings on matters referred to the panel, or as requested by the employer. The bureau shall refer all unresolved issues involving the financial strength or the administrative ability of the employer to operate a self-insured workers' compensation program to the panel for a hearing.
- (B) The self-insured review panel shall consist of three members appointed by the administrator. The members shall consist of persons who shall have expertise or experience in matters relating to self-insuring employers.
- (C) The self-insured review panel shall hold meetings and hearings to determine matters referred to it by the administrator or the bureau's self-insured department for a review. The panel may issue decisions without formal hearing, and may advise the administrator or the self-insured department on issues referred to it. The panel shall afford an employer the opportunity for a formal hearing before the panel upon request.
- (D) If an employer requests a hearing before the review panel or the panel determines that a hearing is in the best interests of the employer or the state insurance fund, the panel shall mail a notice of hearing to the employer and its representatives **by regular mail**, setting forth the date, time and place of the hearing. The notice shall be mailed not less than twenty one days before the date of such hearing. In justifiable cases, an emergency hearing may be arranged with the review panel.
- (E) The panel shall keep a record of its dockets and proceedings. The panel's decisions shall be reduced to writing and mailed to all interested parties and shall state the evidence upon which the decision was based and the reasons for the panel's actions. The decision of the panel shall be the decision of the administrator. If the employer files a written appeal within fourteen days of the employer's receipt of the panel's decision, at the administrator's discretion, the administrator may reconsider the decision of the panel, and may conduct a formal hearing for such purpose.
- (F) The administrator may authorize the review panel to consider the following matters:
 - (1) Granting or denying an application for the privilege to pay compensation, etc., directly;
 - (2) Non-renewals of self-insured status;

- (3) Revocation of self-insuring employer status;
- (4) Issues of a self-insuring employer's adequacy of contribution to the self-insuring employers' guaranty fund or need for additional security under section 4123.351 of the Revised Code;
- (5) Any other self-insuring employer matter as authorized and delegated by the administrator under Chapters 4121. and 4123. of the Revised Code.

Effective Dates: 5/9/90; 11/19/93; 12/17/01

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

- (A) The bureau of workers' compensation shall require self-insuring employers to pay a contribution to the self-insuring employers' guaranty fund as provided in this rule. The contributions due from self-insuring employers shall be established at rates as low as possible but such as will ensure sufficient monies to guarantee the payment of any claims against the fund. All self-insuring employers who are paying compensation as defined by division (L) of section 4123.35 of the Revised Code, whether active or inactive as a self-insuring employer, are required to pay a contribution to the self-insuring employers' guaranty fund as provided in this rule.
- (B) The bureau shall maintain a minimum balance of funds in the self-insuring employers' guaranty fund of one and a quarter times the prior year's payments from the fund as determined at the end of each calendar year to ensure sufficient monies to guarantee the payment of any claims against the fund. When the bureau determines that there are insufficient funds in the guaranty fund and an assessment is necessary to ensure the minimum balance in the fund, the bureau shall assess all self-insuring employers an annual contribution as determined by the administrator to maintain the minimum balance. Annual contributions will not be assessed to all self-insuring employers when the bureau determines that the fund exceeds the minimum amount necessary to guarantee the payment of any claims against the fund, except as provided in paragraph (C) of this rule.
- (C) In addition to any contribution required of all self-insuring employers as provided in paragraph (B) of this rule, the contribution to the self-insuring employers' guaranty fund shall be as follows:
 - (1) New self-insuring employers, for each of the first three years of self-insurance, shall be assessed six per cent of base rate premium as reported on the total of the last two full six-month semi-annual payroll reports submitted as a subscriber to the state insurance fund.
 - (2) A self-insuring employer identified as a high risk employer by the bureau shall be assessed six per cent of the previous year's paid compensation as reported to the bureau or shall be required to provide appropriate security under rule 4123-19-03(A)(1)(c).

The assessment shall not be less than \$5,000 for any twelve-month period of coverage. All annual premiums to the self-insuring employers' guaranty fund are due and shall be collected within forty-five days from the receipt of the bureau's invoice. Self-insuring employers not making timely payments shall be subject to revocation of self-insuring employer status.

- (D) As used in this rule, the bureau shall determine whether a self-insuring employer is a "high risk" employer based upon a review of the self-insuring employer's certified financial records submitted with the application for self-insuring employer renewal. The bureau's analysis and determination may include, but is not limited to, a review of the self-insuring employer's equity to debt ratio, return on equity, Z-score, and a Moody's rating, or other nationally recognized financial rating of the long term stability of a company.

Effective dates: 5/15/95, 12/17/01, 9/17/04

4123-19-16 Self-insured construction projects.

(A) As used in this rule:

(1) "Responsible self-insured employer" or "responsible employer" means the self-insuring employer or the public school employer that enters into a construction contract and applies for permission to self-insure the construction contract. The responsible employer is the entity responsible for the cost of the construction project and generally will be the owner of the project. The responsible employer is the payor under the contract.

"Responsible self-insured employer" or "responsible employer" may include a self-insured general contractor or construction manager whose principal source of business is the execution of construction projects.

(2) "Public school employer" means an employer defined in division (R) of section 4123.35 of the Revised Code that enters into a construction contract exceeding twenty five million dollars and applies for permission to self-insure the construction contract, whether or not the employer is a self-insuring employer.

(3) "General contractor" means a self-insured employer that has entered into a contract with an owner to perform more than fifty per cent, by value, of the work on a construction project.

(4) "Construction manager" means a self-insured employer that has entered into a contract with an owner to provide substantially the same services described in division (A) of section 9.33 of the Revised Code in connection with a construction project. Regardless of any contrary terms of section 9.33 of the Revised Code, for purposes of this rule, the term "construction manager" is not limited to public projects and may apply even if the construction manager also performs construction work on the project.

(5) “Contracting employer” or “subcontracting employer” means any employer, whether state fund or self-insured, that has contracted either directly with a responsible self-insuring employer or with a contracting or subcontracting employer to perform construction services on the construction project. The contracting employer is the payee under the contract, except for where the contracting employer has subcontracted with another contracting employer.

(B) The purpose of this rule is to establish standards by which the administrator may permit a responsible self-insuring employer to self-insure a construction project entered into by the responsible self-insuring employer pursuant to division (O) of section 4123.35 of the Revised Code.

(C) The administrator’s authority to grant self-insured status for a construction project is permissive. The bureau of workers’ compensation may establish criteria for granting self-insured status to ensure the financial stability and claims continuity of the workers’ compensation program. The burden of proof is on the responsible self-insured employer to satisfy the requirements of divisions (O), (P), and (Q) of section 4123.35 of the Revised Code, including designation of a safety professional and employment of an ombudsperson for the construction project, and such other requirements as the administrator may establish by this rule or other policy for granting permission to self-insure a construction project.

(D) A responsible employer filing an application to self-insure a construction project shall be a self-insuring employer under the Ohio workers’ compensation statutes, except that a public school employer may be a state fund employer. A public school employer shall be self-insured for the construction project only and shall maintain state fund coverage for its employees.

(E) In order for a responsible employer to be considered for self-insurance under division (O) of section 4123.35 of the Revised Code, the responsible employer must submit an application including, but not limited to, the following information:

- (1) Dates the construction project is scheduled to begin and end, including the site(s) of the construction project;
- (2) The estimated cost of the project;
- (3) The contracting and subcontracting employers whose employees are to be self-insured by the responsible employer, including estimated payroll (any changes to the list of contracting and subcontracting employers during the duration of the project shall be sent to the bureau within two business days);
- (4) The provisions of a safety program specifically designed for the project;

(5) A statement as to whether a collective bargaining agreement governing the rights, duties, and obligations of each of the parties to the agreement with respect to the project exists between the self-insuring employer and a labor organization.

(6) All applications must be submitted ninety days prior to the desired effective date.

The administrator may require other information as needed to aid in the decision-making process.

(F) If the administrator approves the application, the administrator shall mail to the responsible self-insured employer a certificate granting the privilege to self-insure the construction project. Upon approval, the responsible employer is responsible for the administration and payment for the life of the claim of all claims under Chapters 4121. and 4123. of the Revised Code for the employees of any contracting employers and subcontracting employers covered under the certificate who receive injuries or are killed in the course of and arising out of employment on the project, or who contract an occupational disease in the course of employment on the project.

(G) The responsible employer is entitled to all of the protections provided under Chapters 4121. and 4123. of the Revised Code with respect to the employees of the contracting and subcontracting employers covered under the certificate as if the employees were employees of the responsible employer.

(H) The contracting and subcontracting employers included under the certificate are entitled to the protections provided under Chapters 4121. and 4123. of the Revised Code with respect to the contracting and subcontracting employer's employees who are employed on the construction project which is the subject of the certificate.

(I) The contracting and subcontracting employers included under the certificate shall identify in their payroll records for audit and compliance purposes the employees who are considered the employees of the responsible employer listed in that certificate for purposes of Chapters 4121. and 4123. of the Revised Code, and the amount that those employees earned from employment on the project that is subject to the certificate. The contracting or subcontracting employer shall exclude the payroll for its employees under the construction project from its payroll report and the administrator shall not consider the payroll when determining those contracting or subcontracting employers' premiums or assessments required under Chapters 4121. and 4123. of the Revised Code.

(J) The responsible employer shall include in the amount of paid compensation it reports pursuant to division (L) of section 4123.35 of the Revised Code, the amount of paid compensation that the responsible employer paid pursuant to division (O) of section 4123.35 of the Revised Code.

(K) For a public school employer, the bureau may grant the privilege of participating as a self-insured employer for a construction project under this rule on a one year basis, and

shall consider the project for renewal annually pursuant to rule 4123-19-08 of the Administrative Code.

(1) Surety bond or letter of credit.

(a) A public school employer shall be required to make contributions as determined by the administrator to the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code.

In addition, the employer shall provide additional security as required by the bureau in the amount or form that may be specified by the bureau. At a minimum, the additional security shall be one hundred and twenty-five per cent of the expected workers' compensation losses of the construction project as determined by the bureau. The security shall be in force on or before the administrator grants the privilege to self-insure the construction project. In the event the initial calculation of expected losses is shown to be less than the actual losses, additional security shall be provided as required by the bureau.

(b) The public school employer shall assign the additional security required by this rule to the bureau for the benefit of the disabled employees or the dependents of killed employees of the public school employer for the construction project. In addition, the security shall be applied to disabled workers' relief fund payments to employees of the construction project and administrative expenses of the bureau in the management of such claims of employees of the construction project.

(c) Notwithstanding the authority of the bureau to seek reimbursement from the self insuring employers' guaranty fund, or from surety, excess loss insurance, and any other sources provided by the employer, the legal obligation to pay the costs of injuries, occupational diseases, and deaths incurred under the construction project remains with the public school employer.

(2) Disabled workers relief fund.

A public school employer shall be required to pay the ultimate costs of disabled workers relief fund payments to employees of the construction project, no matter the status of the construction project at the time the disabled workers relief fund payments are made to the employees of the construction project.

(3) Excess loss insurance.

A public school employer may purchase excess loss insurance subject to the rules applying to self-insuring employers. In the event the excess loss insurance is purchased, all rights to recovery from that insurance must be assignable to the bureau in the event of bankruptcy of the public employer school facility employer.

(4) Reducing the costs of the construction project.

As a condition precedent to the bureau granting the privilege to self-insure the construction project, a public school employer shall certify to the bureau by a written document signed by the highest elected official(s) of the employer, the costs savings of self insuring the construction project. The certification shall include data as required by the bureau, including but not limited to a cost analysis showing the costs of insuring the project with the Ohio state insurance fund and the costs of self insuring the project.

(5) Safety plan.

A safety professional shall be assigned to each construction project. The safety professional shall be responsible for ensuring that activities are performed in accordance with the site-specific health and safety plan (“HASP”) and training of site personnel.

A site-specific “HASP” shall be created prior to the start of the project and shall, at a minimum, contain the following elements:

- (a) Identify all recognized site hazards associated with each phase of the project. Particular attention should be given to fall hazards, trenching operations, and electrical hazards.
- (b) Identify key personnel and alternates responsible for site safety and health and the appointment of a site safety and health officer. Roles and responsibilities must be defined.
- (c) Evaluate the risks associated with each operation and identify the appropriate control measures to be taken to minimize or eliminate those risks.
- (d) Address training requirements for both routine and non-routine activities.
- (e) Include contingencies in the “HASP.” Contingencies may include: communications (internal and external), first aid provisions and providers, identification of nearest medical facility, post emergency phone numbers, and site control (prevent access by unauthorized personnel).
- (f) Include employee involvement, such as involvement in inspections, incident investigations, and hazard analyses.
- (g) Collect documentation of information, such as hazard inspections, audits of the “HASP,” injury/illness data, incident investigations, industrial hygiene surveys, maintenance records, and job hazard analyses.

(6) Organizational Plan Criteria.

The public school employer shall:

- (a) Identify a self-insured program administrator to be knowledgeable in the rules and laws of Ohio self-insurance for workers' compensation;
 - (b) Identify its plan to obtain timely payroll information for all contractors and subcontractors covered, to ensure timely calculation and distribution of injured worker benefits; its methodology for payment of compensation and medical fee bills; and its method of educating each contractor and its employers as to proper claim reporting and access to medical care procedures;
 - (c) Designate where claim files will be located;
 - (d) Provide to the bureau for the bureau's approval the employer's plan for medical management of claims as required by paragraph (K)(1) of rule 4123-19-03 of the Administrative Code;
 - (e) Plan to ensure accurate accounting of workers covered under the construction project;
 - (f) Identify the bank being used for the workers' compensation account.
- (7) Ombudsperson duties.

The public school employer shall employ an ombudsperson for the construction project. The ombudsperson shall:

- (a) Have experience in workers' compensation or the construction industry, or both.
- (b) Communicate with and provide information to employees who are injured in the course of, and arising out of, employment on the construction project.
- (c) Investigate the status of a claim upon the request of an employee.
- (d) Provide information to claimants, third party administrators, employers, and other persons in protecting their rights under the workers' compensation laws and rules.

Effective Dates: 12/15/98; 4/9/03 (Emer.); 7/14/03; 9/17/04