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 & 4123-19-03.1

Date: December 2, 2013

Rule Type:

- X New
- X 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- ☐ Rescinded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.**

   Chapter 4123 of the Administrative Code contains rules related to Self-Insuring Employers. BWC is proposing to develop a new rule 4123-19-03.1 that would establish criteria for a waiver of self-insured requirements established in 4123-19-03.

In Paragraph (C) of rule 4123-19-03.1, the Administrator would establish provisions for waiver of the requirement that SI applicants have 500 employees in Ohio.

In Paragraph (D) of rule 4123-19-03.1, the Administrator would establish provisions for waiver of the requirement that SI applicants operate in Ohio for a minimum of two years.

Existing language in Paragraph (A)(1)(a) of rule 4123-19-03 would be eliminated indicating that the cost of a commercial credit reporting bureau service used by BWC to assist in the evaluation of an applicant's financial strength must be paid by the applicant.

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. Additionally, these rule changes were required by the State of Ohio biennial budget (H.B. 59)

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)?** These changes are in response to the State of Ohio biennial budget (H.B. 59) which required the BWC to establish provisions for waiver of certain self-insured requirements.

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

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** The BWC developed the rule changes with stakeholders, including the Ohio Manufacturers' Association. The criteria were also shared with the Ohio Self-Insured 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?** The BWC included stakeholder recommendations related to the waiver criteria as part of the final rule proposal.

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?** These rule changes 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 BWC developed the rule changes with stakeholders in the self-insured community. The BWC will continue to communicate the changes and impacts to existing and prospective members of 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.

The impacted community is current and potential self-insured employers in the state of Ohio. There are approximately 1,200 self-insured employers consisting of both public and private employers. Self-Insured employers employ nearly 2 million Ohio employees.

The impact of these changes should be primarily positive to prospective self-insuring employers as it permits BWC greater flexibility and eases some requirements for eligibility.

On the other hand, easing these requirements for an applicant could increase the number of entities participating in self-insurance, thereby potentially increasing the number of defaults, the solvency of the self-insured guaranty fund, and the amount of assessments charged to employers in the future.

15. **Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** The BWC has a fiduciary responsibility to ensure each employer continues to meet the self-insured requirements outlined in the Revised Code and Administrative Code. The impact of these changes should be primarily positive to prospective self-insuring employers.

Regulatory Flexibility

16. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** The rule changes would grant applicants for self-insurance with less than 500 employees, the ability to obtain self-insured status if certain criteria are met. This additional criterion includes an applicant providing five years of audited financial statements in accordance with Generally Accepted Accounting Principles and obtaining excess insurance at a level established by ORC 4123.82.
17. **How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?** Not applicable.
18. **What resources are available to assist small businesses with compliance of the regulation?** BWC communicates through its website and through the BWC self-insured department to any employer that desires to become self-insured the requirements and waivers of those requirements.