

**OHIO BUREAU OF WORKERS' COMPENSATION
BOARD OF DIRECTORS -- SELF-ASSESSMENT**

SUMMARY OF DIRECTOR RESPONSES

Dated: JULY 25, 2008

The following questions were ranked on a scale from 1 – 5

Key: 1=Room for improvement 3=Satisfied 5=Area of considerable strength

Note: Following each rating table is a summary of director comments with respect to the rated topic.

The Governance Committee of the Board of Directors of the Ohio Bureau of Workers' Compensation (BWC) hereby submits, for consideration by the BWC Board of Directors, a summary of director responses to the self-assessment process voluntarily undertaken by the Board and related action steps. The self-assessment process included the use of a numerical rating system and input was solicited from all Board members. The summary reflects an overall assessment rating for FY 2007/2008 of 4.56 on a rating scale in which 5.0 = "Area of considerable strength" and 3.0 = "Satisfied." The objective of the self-assessment process was for the Board to take time to be introspective and then use the individual Director responses to be proactive in recommending action steps in an effort to continuously improve the Board's processes and effectiveness.

1. I believe I am well informed about the BWC's:

	None	1	2	3	4	5	Rating
Mission and strategic plans				x	xxx	xxxxxxx	4.5
Insurance business				xxxx	xxx	xxxx	4.0
Actuarial soundness				xx	xxxx	xxxxxx	4.3
Investment portfolio				xxx	xx	xxxxxxx	4.3
Financial performance				xxxx	xxx	xxxx	4.0
Cumulative Rating							4.2

The directors generally believe that they have worked hard to assimilate much information on diverse topics in order to understand a complex organization. The educational sessions by the BWC Staff have been very helpful in making progress. Some directors feel unsure of their grasp of certain topics and some would like to see further refinement of financial reporting in order to better evaluate financial performance. Questions were noted as to whether the BWC should be evaluated as an insurance business and whether the mission of the BWC is primarily that of a social insurance agency as opposed to an insurance business.

2. I believe the information I am sent for Board and Committee meetings is:

	None	1	2	3	4	5	Rating
Timely			x	xx	x	xxxxxxx	4.3
Complete			x	xxx	x	xxxxxx	4.1
Understandable				xx	xx	xxxxxxx	4.5
Cumulative Rating							4.3

The directors were generally very complimentary of the efforts of the Administrator and Staff in providing relevant information of good quality in a timely fashion prior to meetings. Several directors

would like more information and more time for review in advance of meetings. Some frustration was expressed regarding situations where information has been provided shortly before or at a meeting where decisions are expected to be made or positions taken on that matter at the meeting.

3. I believe I receive information of sufficient clarity and quality to enable me to understand BWC’s business and financial risks.

Rating	None	1	2	3	4	5	Rating
Tally				xx	xxxxx	xxxx	4.2

The directors generally believe that they understand the business and financial risks of the BWC much better today than they did a year ago. The quality and clarity of the information provided was commended. Some found that the volume of information can be difficult to fully assimilate. Concerns were expressed as to obtaining a better understanding of the nuances of the BWC’s business and financial risks. Reference was made to expectations regarding the forthcoming Deloitte study as providing guidance regarding key business and strategic issues. In terms of subject matter, a concern was expressed regarding gaining a better understanding of the Ohio Industrial Commission.

4. I believe management’s regular presentations on various aspects of the BWC’s business are:

	None	1	2	3	4	5	Rating
Clear and understandable					xxxx	xxxxxxx	4.6
Helpful in providing an accurate picture of the BWC’s performance					xxx	xxxxxxx	4.7
Cumulative Rating							4.7

The directors were generally very complimentary of the ability of BWC management to effectively communicate an accurate picture of the BWC’s performance in understandable terms in presentations and Q&A sessions. A suggestion was made that the Administrator’s report be moved to the front of the agenda for Board meetings, with ample time allotted for Q&A. Another suggestion was made that management should consider including in presentations and reports, where appropriate, opposing views and potential negatives.

5. The process by which the Board evaluates the Administrator’s performance works well.

Rating	None	1	2	3	4	5	Rating
Tally					x	xxxxxxxxxxx	4.9

The directors were united in their strong expression of satisfaction with the process by which the Board evaluated the Administrator’s performance. This speaks well of the care and attention devoted to the process by the Governance Committee, and to the active involvement of all eligible directors in the evaluation process.

6. I believe the rationale for proposed Board and Committee actions is adequately explained prior to action being taken.

Rating	None	1	2	3	4	5	Rating
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Tally				x	xxxxx	xxxxx	4.4
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The directors were generally firm in their belief that the rationale for Board and Committee actions is adequately explained prior to action being taken. Several directors remarked on the thoroughness of the discussion and debate that takes place prior to action being taken. In the context of Committee meetings, a concern was expressed that some actions may require more time for reflection after discussions at the meeting.

7. The pre-meeting reading materials are generally helpful and relevant.

Rating	None	1	2	3	4	5	Rating
Tally					xxxxxx	xxxxx	4.5

The directors generally believe that the pre-meeting reading materials are helpful and relevant. Suggestions included consideration of organizing material by subject matter and continuing the recent practice of transmitting material for major presentations to the directors in advance of the complete Board book.

8. I am satisfied with the conduct of Board meetings in these respects:

	None	1	2	3	4	5	Rating
Agendas				x		xxxxxxxxxxx	4.8
Opportunity for discussion				x		xxxxxxxxxxx	4.8
Frequency						xxxxxxxxxxx	5.0
Cumulative Rating							4.9

The directors strongly expressed satisfaction with the conduct of the Board meetings, the meeting agenda and the frequency of the meetings. The leadership of the Board Chair in setting the tone for the meetings was acknowledged. One director indicated reports of satisfaction with the Board meetings by BWC stakeholders. A concern was voiced that individual directors may not have sufficient input into the meeting agendas unless they are Committee chairs.

9. Overall, I believe each of the Board’s committees work well:

	None	1	2	3	4	5	Rating
Actuarial Committee					xx	xxxxxxxxxxx	4.8
Audit Committee					x	xxxxxxxxxxx	4.9
Investment Committee					x	xxxxxxxxxxx	4.9
Governance Committee					x	xxxxxxxxxxx	4.9
Cumulative Rating							4.9

The directors were united in their strong expression of satisfaction with the workings of the Board Committees. Directors remarked favorably on the attendance of Committee meetings by non-Committee directors, which fosters cross-committee understandings of what other Committees are doing. One director remarked that the Committee meetings are significant in laying the major groundwork for issues addressed by the Board.

10. I believe the Board’s review of the BWC’s audit, audit process, accounting policies and financial statements enables me to gain a clear picture of the state of BWC’s overall health.

Rating	None	1	2	3	4	5	Rating
Tally				xxx	xx	xxxxxxx	4.3

The directors were somewhat divided regarding whether they have gained a clear picture of the state of the BWC's overall soundness through the review of the BWC audit, audit process, accounting policies and financial statements. Some directors who did not provide the highest rating in this category expressed their expectation that, over time and with more study and fine-tuning of financial reporting, the picture would become clearer.

11. Overall, I believe I am provided the resources and tools I need to effectively exercise my fiduciary and oversight responsibilities.

Rating	None	1	2	3	4	4.5	5	Rating
Tally					xxxxx	x	xxxxx	4.5

The directors were generally united in their satisfaction that they are provided the resources and tools needed to effectively exercise their fiduciary and oversight responsibilities. One director noted the abundance of resources available and was very complimentary of the BWC Staff in responding to information requests from individual Board members.

12. Overall, I believe the Board makes the appropriate use of the skills and experience of its members.

Rating	None	1	2	3	4	5	Rating
Tally					xxx	xxxxxxxxx	4.7

The directors were generally of the strong belief that the Board makes appropriate use of the skills and experience of its members. The diversity of experience and expertise represented on the Board was noted, as well as the balance and strength that those qualities bring to the Board.

13. Overall, I believe the Board engages in full and candid discussions of the issues before it and personally feel comfortable expressing my views at Board and Committee meetings.

Rating	None	1	2	3	4	5	Rating
Tally					x	xxxxxxxxxxx	4.9

The directors were unified in their belief that the Board engages in full and candid discussions of the issues before it. The directors were unanimous in stating that they personally felt comfortable expressing their views at Board and Committee meetings. This was noted as being a strength of the Board. Also noted was the hard work and resulting gratification that comes with service on a diverse Board engaging in free and open discussions while dealing with difficult issues.

14. If there is one change I would make, it is . . .

Summary of Individual Director Comments:

A strong theme running through a majority of the individual comments is the need for more efficient time management. This was expressed as a desire to shorten the total monthly time commitment to BWC Board and Committee service while continuing to be diligent in devoting the proper amount of time to critical areas of study, discussion and action, especially at the Committee level. Other comments included

clarifying the Board's responsibility regarding the oversight of the financial performance and operational efficiency of the BWC, and an observation that the BWC staff should be treated with respect, especially when they are in the public eye presenting to the Board and responding to questions.

Individual Director Comments:

- Keeping our time together to just two days a month if possible.
- The length of the Thursday meeting day consisting of a public forum followed by Committee meetings.
- Time management. Presently, given the newness of this Board we need to spend a lot of time getting up to date on numerous items. But, over time we need to carefully consider the time requirement of Board members as well as the time for staff to prepare for Board meetings.
- The time for committee meetings needs to be longer and allow more items and fuller discussion. Perhaps we could start committee meetings earlier on Thursday and allow the chairs to request more than 2 hours.
- Clarification of the process of the oversight of the financial performance and operational efficiency of the BWC.
- Keeping meetings and education sessions to 2 days per month. It is difficult to be in Columbus 3 days per month.
- I want to make sure that staff are not treated inappropriately. They should always be treated with respect, understanding also that there is a certain way that directors are to be treated and addressed.
- That we could move faster!
- Allowing for breaks between the committee meetings.
- Honestly, at this time I cannot think of any. The manner in which this board has assimilated itself, in such a short time, is amazing. We seem to improve, change and correct course as we go.

Recommendations – Specific Follow-Up Action Steps

After a review and discussion of the summary results, the Governance Committee recommends that the Board affirm the following action steps:

1. The Board would encourage strategic discussions at future Board meetings focused on gaining a better understanding of the nature of the insurance aspects of the BWC's operations, including using insurance business vs. social insurance agency comparisons, while also understanding the implications of this analysis for setting the appropriate goals and metrics.
2. The Board would encourage continued attention to timely delivery of materials. Committees and committee chairs are encouraged to adopt a two-step process for major decisions. This would mean planning such that there is an introduction to the topic with discussion at the first monthly meeting, with any follow up with more detail, further discussion and a decision at the second monthly meeting.
3. The Board would encourage a Board and committee planning process resulting in a schedule of meetings over two rather than three days. This process would involve long-range planning and coordination of committee and Board agendas as well as expansion of the Thursday or Friday time schedule to accommodate the requisite discussion and deliberation.
4. The Board would task the Audit Committee to expand its charter, with an appropriate change in the Committee's name, to include oversight responsibilities for finance as well as audit policies

and processes. At the same time, the Board would continue to devote significant time and attention to the overall financial performance and condition of the BWC.

5. All Board members are encouraged to provide, as they may deem appropriate, input regarding the content and structure of future Board and committee meetings by contacting the Board Chair, the committee chairs or the Board Liaison.
6. The Board would continue to expect Board and Committee meetings to be conducted with decorum and respect for directors and BWC staff, while continuing to encourage an open and candid exchange of views.

4. I believe management's regular presentations on various aspects of the BWC's business are:
- Clear and understandable 1 2 3 4 5
 - Helpful in providing an accurate picture of the BWC's performance. 1 2 3 4 5

Comments:

5. The process by which the Board evaluates the Administrator's performance works well. 1 2 3 4 5

Comments:

6. I believe the rationale for proposed Board and Committee actions is adequately explained prior to action being taken. 1 2 3 4 5

Comments:

7. The pre-meeting reading materials are generally helpful and relevant. 1 2 3 4 5

Comments:

8. I am satisfied with the conduct of Board meetings in these respects:

- | | | | | | |
|------------------------------|---|---|---|---|---|
| • Agendas | 1 | 2 | 3 | 4 | 5 |
| • Opportunity for discussion | 1 | 2 | 3 | 4 | 5 |
| • Frequency | 1 | 2 | 3 | 4 | 5 |

Comments:

9. Overall, I believe each of the Board's committees work well.

- | | | | | | |
|------------------------|---|---|---|---|---|
| • Actuary Committee | 1 | 2 | 3 | 4 | 5 |
| • Audit Committee | 1 | 2 | 3 | 4 | 5 |
| • Investment Committee | 1 | 2 | 3 | 4 | 5 |
| • Governance Committee | 1 | 2 | 3 | 4 | 5 |

Comments:

10. I believe the Board's review of the BWC's audit, audit process, accounting policies and financial statements enables me to gain a clear picture of the state of BWC's financial position. 1 2 3 4 5

Comments:

11. Overall, I believe I am provided the resources and tools I need to effectively exercise my fiduciary and oversight responsibilities. 1 2 3 4 5

Comments:

12. Overall, I believe the Board makes the appropriate use of the skills and experience of its members. 1 2 3 4 5

Comments:

13. Overall, I believe the Board engages in full and candid discussions of the issues before it and personally feel comfortable expressing my views at Board and Committee meetings. 1 2 3 4 5

Comments:

14. If there is one change I would make, it is . . .

Signature (optional)

Date: May 26, 2009

From: Alison Falls, Chair, BWC Governance Committee

To: The BWC Governance Committee

cc. Marsha Ryan, Don Berno, James Barnes, Ann Shannon, John Williams, Ron O'Keefe

Re: The Board Annual Self-Assessment Process

Following the Governance Committee and Board discussion at the May 2008 meetings, the Board agreed to move forward with the self-assessment process. The Summary Results of the 2008 Board Self-Assessment process has been provided in the Board Books, previously distributed. The purpose of this memo is to review the background and rationale for the process, review the 2008 form for any suggested modifications and propose a timeline for the 2009 Board Self-Assessment process.

Background

The BWC Board of Directors is not required by law to conduct an annual self-assessment of the effectiveness of the Board. However, a Board self-assessment process is a logical corollary to the evaluation of the Administrator (required by law), a governance process that is considered to be a "best practice", and a requirement for all publicly traded companies on the NYSE.

The role of the Governance Committee is to design a process that provides for input from all Board members regarding their opinion on a range of Board processes, including information, discussion and decision-making. The objective is for the Board to take time to be introspective and then use the self-assessment process to be proactive in recommending action steps to continuously improve the Board's processes and effectiveness.

Discussion of the 2008 Board Self Assessment Form

There are currently no changes proposed to the 2008 form. One reflection of the effectiveness of last year's self-assessment process and the form is the substance of the follow-up action steps at the end of the Summary of Director responses. In addition, it is proposed that the Board once again utilize the services of Fiduciary Counsel, Ron O'Keefe, to compile and summarize the directors' responses.

Proposed Timeline for the 2009 Board Self-Assessment Process

- Thursday, May 28th, the Governance Committee reviews the self-assessment form and timeline and makes a recommendation, with changes as appropriate, to the Board.
- Friday, May 29th, the Board considers the Governance Committee recommendation and votes to approve or modify the 2009 form and timeline for the self-assessment process.

- As approved, the self-assessment form will be delivered to each Board member.
- Monday, June 8th, Board members should return their completed forms to Fiduciary Counsel by close of business. Individual Board members should contact Fiduciary Counsel with respect to questions they may have regarding their completion of the form. Forms may be returned either by e-mail, FAX or hard copy.
- Tuesday – Thursday, June 9-11th: Once the completed forms have been received, Fiduciary Counsel will create an overview report compiling the input of each Board member, and will discuss the overview report with the Board Chair, the Governance Committee Chair and the Administrator.
- Thursday, June 18th: In Executive Session, the Governance Committee will discuss the results of the Board's self-assessment. The Governance Committee, with the assistance of Fiduciary Counsel, will finalize the summary report reflective of the responses of Board members to the self-assessment form, and incorporate a recommendation section in the summary report to focus on specific follow-up action steps.
- Friday, June 19th: In Executive Session, the Board will review and discuss the various perspectives reflected in the compilation report with a view towards resolving apparent differences and/or moving toward a consensus view. The Board will also discuss and move toward a consensus view regarding the Governance Committee's recommended action steps.
 - The Board will reconvene in an open meeting for any vote on the Board's self-assessment and/or action plan, as may be appropriate or required.

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rule 4123:1-7

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: R.C. 4121.13 and 4121.47

2. The rule achieves an Ohio specific public policy goal.

What goal(s): Protection of workers in the metal casting industry.

3. Existing federal regulation alone does not adequately regulate the subject matter.

4. The rule is effective, consistent and efficient.

5. The rule is not duplicative of rules already in existence.

6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. The rule has been reviewed for unintended negative consequences.

8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: Several employer and employee organizations were contacted. The Ohio Cast Metals Association and the United Steel Workers agreed to participate in the review process. Due to scheduling problems and health issues with one of the committee members, a face to face meeting was not able to be implemented. Both organizations have stated they are satisfied with the proposed change and have no further changes to add at this time.

9. The rule was reviewed for clarity and for easy comprehension.

10. The rule promotes transparency and predictability of regulatory activity.

11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

BWC Board of Directors
Executive Summary
Metal Casting Industry

Introduction

Chapter 4123:1-7 of the Ohio Administrative Code contains BWC rules addressing occupational safety and health rules for the metal casting industry. Chapter 4123:1-7 was initially enacted in 1964 by the Industrial Commission and has been reviewed many times since that time. The last revision occurred in 2003 under the rules conventions of the Industrial Commission and the Bureau of Workers' Compensation.

Background Law

The Ohio Constitution, Article II, Section 35, and R.C. 4121.13 empower the BWC to adopt rules which establish worker safety standards. Article II, Section 35, of the Ohio Constitution and R.C. 4121.47 provide that an injury due to a violation of a specific safety rule (VSSR) can result in an employer paying a 15% to 50% penalty added to the compensation payable to an injured worker.

Ohio Administrative Code 4123:1-7 on metal casting has no direct analog in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St. 3d 3.

Proposed Change

The only proposed change to this rule is an update to 4123:1-7-01(A). Specifically, the current reference to Chapter 4121:1-5 should be changed to reflect 4123:1-5. It is recommended that the remainder of the rule remain the same.

Stakeholder Involvement

Stakeholders from both management and labor organizations were contacted and invited to participate in the review process. The Ohio Cast Metals Association and the United Steel Workers agreed to participate. A face to face meeting was scheduled but was cancelled the day it was to go forward due to participant health issues and scheduling difficulties. Both organizations have stated they are satisfied with the proposed change and have no further changes to offer at this time.

Chapter 4123:1-7 Metal Casting

4123:1-7-01 Scope and definitions.

(A) Scope.

The purpose of this chapter of the Administrative Code is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio Bureau of Workers' Compensation may grant exceptions from the literal provisions of the rules of this chapter or permit the use of other devices or methods when, in the opinion of the Bureau, equivalent protection is thereby secured.

The specific requirements of this chapter supplement those of Chapter ~~4121:1-5~~ 4123:1-5 of the Administrative Code, and are minimum requirements of an employer for the protection of such employer's employees and no others and apply to the manufacture of castings containing iron, steel, brass, copper, tin, zinc, lead, aluminum, or any of the baser metals, but do not apply to steel making or any processes used in conjunction with steel manufacturing and fabricating.

Installations or constructions built or contracted for prior to the effective date of any requirement shall be deemed to comply with the provisions of these requirements if such installations or constructions comply either with the provisions of these requirements or with the provisions of any applicable specific requirement which was in effect at the time contracted for or built.

(B) Definitions.

(1) "Core" means a preformed sand aggregate inserted into a mold to shape the interior of a casting.

(2) "Core box" means a wood, metal or plastic structure used to shape sand into a core.

(3) "Crucible" means a ceramic pot or receptacle used in melting molten metal, transporting it or both.

(4) "Cupola" means a cylindrical furnace lined with refractories for melting metal in direct contact with the fuel by forcing air under pressure through openings near its base.

(5) "Factor of safety" means the ratio between the ultimate breaking stress and the working stress of the material, structure, or device. For example, the term "factor of safety of four" means the material, structure or device shall be constructed of such strength that the maximum load will be one-fourth the designed ultimate breaking load. Where other factors of safety appear, they shall apply in the same manner. The standards of the "American Society for Testing Materials" shall be used in determining the strength of material except as otherwise provided herein.

(6) "Flask" means the frame which holds the sand or other substance forming the mold.

(7) "Gallery" means a corridorlike platform, passage or walkway, especially one projecting from a wall and open at the outer edge.

(8) "Guard" means the covering, fencing, railing, or enclosure which shields an object from accidental contact.

(9) "Guarded" means that the object is covered, fenced, railed, enclosed, or otherwise shielded from accidental contact.

(10) "Ladle" means a metal receptacle frequently lined with refractories used for transporting and pouring molten metal.

(11) "Mold" means the form into which molten metal is poured to produce a casting.

(12) "Operator" means any employee assigned or authorized to work at the specific equipment.

(13) "Passageway" means a well defined aisle, gangway, walkway, etc., used for movement of employees and equipment, but does not include the space between molds unless regularly used for such movement.

(14) "Pig hole" means the opening into which the excess molten metal is poured.

(15) "Pig mold" means a mold used to hold excess molten metal.

(16) "Pouring floor or area" means the floor or area where molten metal is poured.

(17) "Shall" is to be construed as mandatory.

(18) "Substantial" means construction of such strength, of such materials, and of such workmanship that the object will withstand the wear, usage or shock for which it is designed.

(19) "Trunnion" means the cylindrical metal support attached to the side of a ladle or flask.

(20) "Tumbling mill" means a rotating barrel in which castings are cleaned.

HISTORY: Eff. 4-1-64; 1-1-81; 4-1-99

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.12, 4121.121, 4121.13

Rule amplifies: RC 4121.47

119.032 Review date: 3/1/03; 3/1/98

4123:1-7-02 Floors and pits.

(A) General requirements.

(1) All floors and pits where molten metal is handled shall be kept free from puddles of liquid.

(2) Floors adjoining industrial tracks at the cross-over point shall be approximately flush with the top of the track rails.

(3) Pig holes in the floor shall be guarded. Pig molds and receiving stations for excess molten metal from ladles shall be located in such a manner as to maintain a clear passageway.

(B) Ladle pits.

(1) Pits for metal and slag ladles at melting equipment shall be kept clean and dry.

(2) Ladle pits shall have no less than one foot of clearance over the greatest overall dimension of the ladle.

(3) Employees shall not be required to be in pits used for metal or slag ladles while metal or slag is being poured into the ladle.

HISTORY: Eff (Amended) 4-1-64; 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-03 Galleries.

(A) Galleries where molten metal is poured into molds shall be:

(1) Provided with solid, leakproof floors, or

(2) Guarded to prevent access to the area below the pouring operation.

(B) Partitions of sheet steel no less than forty-two inches in height shall be installed on any open side of galleries described in paragraph (A) of this rule.

HISTORY: Eff (Amended) 4-1-64; 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-04 Passageways.

(A) Passageways shall be sufficiently firm to withstand the travel for which they are intended, and shall be kept clear of obstructions.

(B) Passageways shall be no less than twenty-four inches wide where no more than two employees manually carry molten metal.

(C) Passageways shall be no less than five feet wide where more than two employees manually carry molten metal.

(D) Passageways where molten metal is transported in truck, sulky, or manually operated monorail ladles shall be no less than twenty-four inches wider than the extreme width of such ladles.

(E) Passageways used for parallel travel of truck ladles or manually operated monorail ladles shall be no less than twice the width required for a one-ladle operation.

HISTORY: Eff (Amended) 4-1-64; 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-05 Ladles.

(A) General.

(1) Ladles shall be thoroughly dry before use.

(2) Powered monorail ladles, cars, trucks and cranes used to transport molten metal ladles shall be equipped with audible or visual warning devices which shall be used whenever molten metal is being transported.

(3) An audible or visual warning device shall be used when a manually operated monorail ladle, transporting molten metal, crosses an intersecting passageway.

(B) Tilting (lip-pouring) ladles.

(1) Tilting ladles exceeding two thousand pounds capacity shall be of the gear-operated type.

(2) All mechanically or electrically operated tilting ladles shall be equipped with a suitable locking device or brake to prevent overturning or uncontrolled sway.

(3) The refractory rim or lip on hand or bull ladles shall be no more than one-half inch above the top of the metal shell, unless the refractory ladle lining is one and one-half inch thick or more at the rim, in which case the maximum height shall be one inch.

(C) Bottom pouring.

A pig or holding ladle shall be so positioned as to receive hot metal should the stopper malfunction or fail to fully shut off the metal flow.

(D) Ladle additions.

(1) Moist metal shall not be added to molten metal.

(2) Iron in a ladle shall not be treated with magnesium or its alloys while the ladle is suspended from a hoist or crane unless the cables are shielded.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-06 Trunnions.

(A) Trunnions and the devices used to attach them to flasks, buckets, ladles, and other equipment shall be constructed with a factor of safety of no less than ten.

(B) The diameter of the head on the outside end of the trunnion shaft shall be no less than one and one-half times the diameter of the shaft.

(C) When trunnions are used with wire rope slings or chain, the diameter of the head shall be no less than the diameter of the shaft plus one and one-half times the diameter of the sling or chain size used.

(D) The inside corners where the trunnion shaft joins the base and the head shall be filleted.

(E) The radius of the corner between the groove and the head shall be approximately equal to the radius of the sling used, the remainder of the inside edge of the head being straight.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-07 Scrap breakers.

(A) The breaking of scrap or castings by the use of a demolition weight inside the foundry building during regular operating periods is prohibited.

(B) Where a demolition weight is used to break skulls and scrap outside the foundry building, the operation shall be performed in a restricted or guarded area identified by appropriate signs and away from employees not involved in demolition work.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-08 Cupolas.

(A) Charging.

(1) A substantial cover constructed to allow for ventilation shall be provided at the charging floor level and between the cupola shell and charging floor when employees are working inside the cupola and below the charging floor level.

(2) The area underneath cupola charging equipment shall be guarded to prevent material from dropping onto employees during charging operations.

(B) Dropping cupola bottom.

(1) The area underneath the cupola shall be free from liquid before the bottom is dropped.

(2) A whistle or other warning signal shall alert employees before the bottom is dropped.

(3) A block and tackle, wire rope, chain, or other mechanical means shall be used to drop the bottom.

(4) The area surrounding the operation shall be cleared of all employees at the time the bottom is dropped, except for the employee(s) pulling the pin or posts who shall be protected by shielding, protective clothing or protective equipment.

(C) Cupola bottom support.

(1) When the cupola is in operation, its bottom doors shall be supported by a drop leg and two adjustable screw props on a metal prop base set on a concrete or other fabricated footing of equivalent strength, provided that, where the bottom doors are supported by hydraulic door closers or equivalent, a drop leg or a door locking mechanism is required.

(2) Temporary supports, such as timbers, blocking, or shoring, shall be placed under the cupola bottom doors to prevent a premature bottom drop.

(3) Mechanical means shall be provided for raising the bottom doors of the cupola.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-09 Crucibles.

(A) Crucibles shall be maintained in good condition, free from cracks and other flaws.

(B) Crucibles shall be stored in a warm, dry place immediately prior to being used.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-10 Sand mullers and mixers.

(A) Sand mullers and mixers shall be locked out to prevent operation while employees are inside the chamber.

(B) Openings used for the sampling of sand shall be guarded and all other mixer openings shall be provided with a screen or equivalent protection.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-11 Molds and cores.

(A) Molds.

(1) No employee shall be required to work under molds suspended from cranes.

(2) All molding machines shall be equipped with two-hand controls or equivalent protective devices for each employee assigned to the machine.

(3) Automatic molding machines which go through a complete cycle without an operator shall be guarded.

(4) Where the clearance between the mold conveyor and any fixed or portable object is less than eighteen inches, the space or clearance shall be blocked to prevent passage.

(5) When a molding machine is to be repaired, all energy sources shall be shut off, locked out, and any pressure bled from the machine.

(B) Cores.

(1) The surfaces of all core boxes used in bench work shall be smooth and free from splinters or sharp edges.

(2) Automatic or semi-automatic core blowing machines shall be guarded.

(3) When a core machine is to be repaired, all energy sources shall be shut off, locked out, and any pressure bled from the machine.

(4) Walk-in ovens shall be provided with a means of escape from the inside, such as emergency exit doors, kickout panel or plate, duplicate opening mechanism, etc.

(5) In batch ovens, sufficient space shall be provided to allow unobstructed access for employees or machine loading.

(6) Batch ovens having vertically sliding doors shall be provided with devices which keep the door in the raised position.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-12 Sandblasting.

Where sandblasting occurs, employees shall be protected by personal protective equipment, dust-tight enclosures, or equivalent means of protection to prevent injurious exposures.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

4123:1-7-13 Tumbling mills.

(A) All tumbling mills shall be provided with a suitable guard to protect employees from the exposed parts of the mill during operation.

(B) Manually loaded tumbling mills shall be equipped with a locking device to prevent the mill from turning when the doors are opened.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

4123:1-7-14 Chipping and grinding.

Where castings are cleaned by chipping or grinding, employees shall be protected from flying chips or particles by personal protective equipment, screens, partitions, or equivalent protection.

HISTORY: Eff 1-1-81

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35

119.032 Review Date: 3-1-03

Common Sense Business Regulation
Rule 4123-1-9 Steel Making, Manufacture, Fabricating

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: R.C. 4121.13 and 4121.47

2. The rule achieves an Ohio specific public policy goal.

What goal(s): BWC 5 year rule review and update. The goal is to ensure that employers in the state of OHIO comply with the OAC requirements to provide a workplace safe from recognized workplace hazards and to protect employees safety and health. This also aligns with the mission of the Ohio BWC to “protect injured workers and employers from a loss as a result of workplace accidents, and to enhance the general health and well-being of Ohioans and the Ohio economy”

3. Existing federal regulation alone does not adequately regulate the subject matter.
4. The rule is effective, consistent and efficient.
5. The rule is not duplicative of rules already in existence.
6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.
7. The rule has been reviewed for unintended negative consequences.
8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: Contact Date 10-24-08
American Iron & Steel Institute - Ohio members
<http://www.steel.org/map/Ohio.pdf>

Association for Iron & Steel Technology - Ohio chapters
Northeastern Ohio: http://www.aist.org/chapters/mc_northeasternohio.htm
Ohio Valley: http://www.aist.org/chapters/mc_ohiovalley.htm

United Steelworkers - Ohio
<http://legacy.usw.org/usw/program/content/1272.php>

National organizations:

American Coke and Coal Chemicals Institute (Washington DC)
<http://www.accci.org/>

Steel Manufacturers Association (Washington DC)

<http://www.steelnet.org/>

Specific Companies contacted 10-30-08 to 11-15-08

United Steel Workers Union
ArcelorMittal – Warren, OH
NUCOR Corporation – Cincinnati, OH
AK Steel Corporation – Mansfield, OH
United States Steel Corporation – Leipsic, OH
AK Steel Corporation – Middletown
ArcelorMittal – Cleveland, OH
Cliffs Natural Resources Inc. – Cleveland, OH
ArcelorMittal – Richfield, OH
United States Steel Corporation – Lorain, OH
The Timken Company – Canton, OH
McDonald Steel- Youngstown OH

Committee set up contact dates 10-30-08 to 11-15-08
Opportunity for public comment 11-26-08 to 2-20-09
Face to face meeting date 2-12-09 Canton OH
Final revisions sent to committee for review, 2-20-09

9. The rule was reviewed for clarity and for easy comprehension.
10. The rule promotes transparency and predictability of regulatory activity.
11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.
12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____
13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor’s Executive Order.

BWC Board of Directors
Executive Summary
OAC Steel Making, Manufacturing, and Fabricating

Introduction

Chapter 4123-1-9 of the Ohio Administrative Code (OAC) contains BWC rules which set safety standards in steel making, manufacturing, and fabricating. BWC owns and maintains the revision and update process for this section of the OAC. These specific requirements supplement the safety standards contained in OAC 4123:1-5 on workshops and factories but do not apply to the manufacture of metal castings.

Background Law

The Ohio Constitution, Article II, Section 35 and R.C. 4121.13 empower the BWC to adopt rules which establish worker safety standards. Article II, Section 35, of the Ohio Constitution and R.C. 4121.47 provide that an injury due to a violation of a specific safety rule (VSSR) can result in an employer paying a 15% to 50% penalty added to the compensation payable to an injured worker.

Ohio Administrative Code 4123:1-9 on steelmaking has no direct analog in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St.3d 3.

Proposed Change

The proposed changes to the steel making rule were first offered by our stakeholders. All of their recommendations which follow are sound safety practices. All of the proposed changes are consistent with OSHA regulations and ANSI (American National Standards Institute) standards.

RECOMMENDATIONS: (11)

4123:1-9-01(A)Scope.

End of second paragraph: "manufacture of metal castings" would be more accurately expressed in current terminology as "foundry type operations".

4123:1-9-01 (B) Definitions. It is recommended that outdated terminology be removed.

4123: 1-9-02 Coke plants (A) (2), 4123:1-9-03 Blast Furnaces (H), 4123:1-9-04 Steel Making (B), (F) (2). These sections currently contain similar operations and require "audible OR visual warning devices". It is recommended that we expand safety protection to include "audible AND visual warning devices".

4123:1-9-03(C) Blast Furnaces.

It is recommended that a gas-carrying lines safety standard be added and 4123:1-9-02 on Coke Plants should also incorporate the upgraded standard which requires both audible and visual warning devices.

4123:1-9-04(F) Steel Making.

It is recommended that open hearth furnace standards be incorporated in to (D) Oxygen furnaces or (E) Electric furnaces or both. The stakeholder committee elected to expand these standards to both sections and remove Open Hearth Furnaces because advances in technology have occurred which have resulted in there being no open hearth furnaces utilized in the industry any more.

4123:1-9-05(H)

It is recommended that for the sake of consistency in the context of rolling operations that we use the term “discharging” uniformly throughout and discontinue the use of the similar term “drawing”.

Stakeholder Involvement

The review committee process consisted of contacting 12 Ohio Steel Manufacturers, 6 Steel Industry Associations, and the Ohio United Steel Workers Union. Six parties participated in the committee review culminating in a personal meeting in Canton on February 12, 2009. Several electronic, phone and face to face meetings were held. Representatives from both labor and management participated in the review process. The Committee participants included:

United Steel Workers Union Ohio District 1
Timken Company
United States Steel Corporation
Serverstal North America Inc.
McDonald Steel Corporation
AIST Northeastern Ohio Chapter

Chapter 4123:1-9 Steel Making, Manufacturing, and Fabricating

4123:1-9-01 Scope and definitions.

(A) Scope.

The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the industrial commission, equivalent protection is thereby secured.

These specific requirements supplement those of Chapter 4123:1-5 of the Administrative Code, "Specific Safety Requirements of the Ohio Bureau of Workers' Compensation Relating to All Workshops and Factories," and are minimum requirements of an employer for the protection of such employer's employees and no others and apply to steel making and the processes used in conjunction with steel manufacturing and fabricating but do not apply to the manufacture of foundry type operations. Installations or constructions built or contracted for prior to the effective date of any requirement shall be deemed to comply with the provisions of these requirements if such installations or constructions comply either with the provisions of these requirements or with the provisions of any applicable specific requirement which was in effect at the time contracted for or built.

Deleted: metal castings.

Deleted: ¶

(B) Definitions.

(1) "Approved" means accepted or certified by a nationally recognized testing agency, such as "Underwriters' Laboratories," "Factory Mutual Engineering Corporation," or a responsible governmental agency.

(2) "Bosh tank" means a tank used to collect circulating discharge water from furnaces.

Deleted: reheating

(3) "Danger zone" means the point of operation where a known critical hazard exists.

(4) "Guard" means the covering, fencing, railing, or enclosure which shields an object from accidental contact.

(5) "Guarded" means that the object is covered, fenced, railed, enclosed or otherwise shielded from accidental contact.

(6) "Mixer" means a vessel that contains a supply of molten pig iron available when needed for charging into open hearth furnaces and for holding successive casts or lots of iron from blast furnaces to reduce irregularities in the iron.

(7) "Operator" means any employee assigned or authorized to work at the specific equipment.

(8) "Shall" is to be construed as mandatory.

(9) "Substantial" means construction of such strength, of such materials, and of such workmanship that the object will withstand the wear, usage, or shock for which it is designed.

(10) "Standard guard railing" means a substantial barrier constructed in accordance with paragraph (E) of rule 4123:1-5-02 of the Administrative Code.

HISTORY: Eff (Amended) 4-1-64; 1-1-83; 12-1-04

Rule promulgated under: RC 119.03

Rule authorized by: RC 4121.13, Const. Art. II, Section 35

Rule amplifies: 4121.12, 4121.121, 4121.13

R.C. 119.032 review dates: 09/01/2004 and 03/01/2008

4123:1-9-02 Coke plants.

(A) Warning signs and devices.

(1) Signs.

All approaches leading to rooms or buildings where coal dust or flammable gas may accumulate shall bear warning signs forbidding smoking or open flames.

(2) Quenching car locomotives, pushers and larry cars (charging cars) shall be equipped with audible and visual warning devices.

Deleted: or

(B) Electrical equipment.

Approved electrical equipment shall be used in coal handling and by-product operations.

(C) Gas-carrying lines.

(1) A line carrying blast furnace gas shall be purged before opening or entering.

(2) A line carrying coke gas shall be purged before opening or entering.

R.C. 119.032 review dates: 09/01/2004 and 03/01/2008

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.13

Rule Amplifies: 4121.13, Const. Art. II, Sec. 35

Prior Effective Dates: 4/1/64, 5/1/81

4123:1-9-03 Blast furnaces.

(A) Communication system.

A means of communication shall be provided between the furnace, the cast house, the blower's office, and the skip operator's station. Additionally, a system for voice communication shall be provided between the furnace top and the cast house when employees are required to perform work on the top of an operating blast furnace.

(B) Passageways under skip car tracks.

Passageways under skip car tracks shall be guarded from falling material.

(C) Gas-carrying lines.

(1) A line carrying blast furnace gas shall be purged before opening or entering.

(2) A line carrying coke gas shall be purged before opening or entering.

(D) Repairs to chimney stoves and furnace.

Before interior repairs are made to any chimney stove or furnace, gas lines shall be blanked off.

(E) Cast house.

The cast house shall have an exit on at least two different sides or two different ends.

(F) Iron and cinder runners.

All permanent gates in iron and cinder runners shall be operated at a distance of no less than three feet from the side of the runner.

(G) Dust catchers.

Operating devices for dumping dust catchers when pug mills are not provided shall be located a distance of no less than eight feet from the outlet of the hopper.

(H) Scale and transfer cars.

All scale and transfer cars shall be equipped with audible ~~and visual~~ warning devices and rail sweeps maintained in proper working order.

Deleted: or

R.C. 119.032 review dates: 09/01/2004 and 03/01/2008

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.13

Rule Amplifies: 4121.13, Const. Art. II, Sec. 35

Prior Effective Dates: 4/1/64, 5/1/81

4123:1-9-04 Steel making.

(A) Mixers.

(1) All mechanically or electrically operated mixers shall be equipped with a counterbalance, automatic device, or the equivalent, designed to return the mixer to an upright position or to prevent it from further tipping in case of power failure.

(2) All hydraulically powered mixers shall be equipped with an emergency valve so arranged that if the main operating valve fails while the mixer is pouring, the emergency valve can be operated immediately to return it to an upright position or to prevent it from further tipping.

(B) Mixer building.

The mixer building shall be equipped with an audible warning device which shall operate automatically during any pouring operation.

(C) Auxiliary hoists (mixer ladle cranes).

Auxiliary hoists on mixer ladle cranes shall be equipped with a type of hook which can be attached to the ladle after the ladle has been hoisted into pouring position.

(D) Oxygen furnaces – blown basic steelmaking process.

(1) Each oxygen furnace – blown basic steelmaking process – shall be equipped with a means of communication connecting the charging crane, the charging floor, each operating floor and each pulpit.

(2) Charging floors and operating floors shall be provided with approved handrails and toeboards. This does not apply to pouring and mold preparation platforms.

(3) Pit areas on charging and tapping sides of steelmaking processes shall be provided with drainage.

(4) Provision shall be made to shut off the oxygen when a furnace is shut down for repairs.

(5) Tapping platforms and charging floors

(a) Tapping platforms and charging floors shall be provided with standard guardrailings. This does not apply to pouring and mold preparation platforms.

(b) A guard shall be provided to protect the opening in the railing of a tapping platform used for spouts and runners, which may be removed when work is being performed at that point.

(E) Electric furnaces.

(1) Provision shall be made to lock out the source of power when work is performed in or on an electric furnace.

(2) Transformer vaults for electric furnaces shall be kept locked at all times and accessible only to authorized personnel.

(3) Tapping platforms and charging floors

(a) Tapping platforms and charging floors shall be provided with standard guardrailings. This does not apply to pouring and mold preparation platforms.

(b) A guard shall be provided to protect the opening in the railing of a tapping platform used for spouts and runners, which may be removed when work is being performed at that point.

~~(F) Muffle furnaces.~~

Muffle furnaces shall be equipped with a safe means of lighting.

~~(G) Scrap breakers.~~

Where a demolition weight is used to break skulls and scrap, the operation shall be performed in a restricted or guarded area identified by appropriate signs and away from employees not involved in demolition work.

R.C. 119.032 review dates: 09/01/2004 and 03/01/2008

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.13

Rule Amplifies: 4121.13, Const. Art. II,

Sec. 35

Prior Effective Dates: 4/1/64, 5/1/81

4123:1-9-05 Rolling operations.

(A) Subways or crossovers.

Subways with overhead protection or crossovers shall be provided at established passageways which cross the rolling line.

(B) Coupling boxes, spindles and wobblers.

Coupling boxes, spindles and wobblers seven feet or less above floor level shall be guarded.

(C) Access to top of housing.

Steps or equivalent means shall be provided for reaching the top of housing(s) four feet or more above floor level.

(D) Rolling tables.

Stop guards shall be placed at the dead end of all rolling tables.

(E) Bosh tank.

The top of the bosh tank shall be guarded unless it is at least forty-two inches above floor level.

(F) Stop guards.

Deleted: ¶

Deleted: (F) Open hearth furnaces.¶
(1) Tapping platforms and charging floors.¶
(a) Tapping platforms and charging floors shall be provided with standard guard railings. This does not apply to pouring and mold preparation platforms.¶
(b) A guard shall be provided to protect the opening in the railing of an open hearth tapping platform used for spouts or runners, which may be removed when work is being performed at that point.¶
(2) Charging machines – warning devices.¶
All open hearth charging machines shall be provided with an audible or visual warning device.¶
(3) Furnace repairs.¶
Fuel lines shall be blanked off while a furnace is being repaired.¶
(4) Escape platform.¶
Means of escape shall be provided for operators of open hearth pit cranes, consisting of an escape platform on the outside of the building or other effective arrangement which will be accessible from the crane cab in all its positions.¶
(G)

Deleted: (H)

Adjustable stop guards shall be installed at the outside of hot beds and skids.

(G) Looping posts.

Looping posts shall be used on small non-automatic repeater type mills where bars are being rolled in more than one pass in a continuous operation.

(H) Tubular products.

(1) Openings in welding and heating furnaces.

Charging and discharging openings in heating furnaces shall be provided with shields.

(2) Signal system.

A signal system shall be provided between the charging and ~~discharging openings~~ of all heating furnaces.

Deleted: drawing ends

(3) Barring to prevent passage.

Space between ends of troughs, conveyors or tables and roll stands shall be barred to prevent passage of employees.

(4) Butt weld mills.

Movable draw benches and chains on butt weld mills shall be guarded.

(5) Cross roll troughs.

Stops or guards shall be provided at the delivery end of cross roll troughs.

(I) Wire mills.

(1) Overhead protection – passageways.

Passageways under hot wires from annealing furnaces shall be provided with overhead protection.

(2) Wire drawing machines.

Wire drawing machines shall be equipped with an emergency stopping device such as an electric eye, trip cord, or similar means.

(3) Bull blocks.

All bull blocks shall be provided with a substantial back guard.

R.C. 119.032 review dates: 09/01/2004 and 03/01/2008

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.13

Rule Amplifies: 4121.13, Const. Art. II, Sec. 35

Prior Effective Dates: 4/1/64, 5/1/81

	B	C	4123:1-9 Steel Making	D	E
1	Recommended changes				
2	RULE	ORIGINAL PARAGRAPH	CHANGE	COMMENTS	
3	4123:1-9 Steel Making, Manufacturing, and Fabricating				
4	4123:1-9-01 (A) Scope and definitions (A)	These specific requirements supplement those of Chapter 4123:1-5 of the Administrative Code, "Specific Safety Requirements of the Ohio Bureau of Workers' Compensation Relating to All Workshops and Factories," and are minimum requirements of an employer for the protection of such employer's employees and no others and apply to steel making and the processes used in conjunction with steel manufacturing and fabricating but do not apply to the manufacture of metal castings.	(A) These specific requirements supplement those of Chapter 4123:1-5 of the Administrative Code, "Specific Safety Requirements of the Ohio Bureau of Workers' Compensation Relating to All Workshops and Factories," and are minimum requirements of an employer for the protection of such employer's employees and no others and apply to steel making and the processes used in conjunction with steel manufacturing and fabricating but do not apply to the manufacture of foundry type operations.	End of paragraph should be better clarified as foundry-type operations	
5	4123:1-9-01 (B) Definitions (2) Bosh Tank	"Bosh Tank" means a tank used to collect circulating discharge water from reheating furnaces.	"Bosh Tank" means a tank used to collect circulating discharge water from furnaces	Review and Update, reheating removed, reheating limited the definition to only reheating bosh tanks	
6	4123:1-9-02 Coke Plants (A) Warning signs and devices(2)	Quenching car locomotives, pushers and larry cars (charging cars) shall be equipped with audible or visual warning devices.	Quenching car locomotives, pushers and larry cars (charging cars) shall be equipped with audible and visual warning devices.	The above listed areas of concern all say "audible or visual warning devices. In many cases workers do not see or hear a single warning device. The listed areas of the code should read audible and visual warning device.	
7	4123:1-9-02 Coke Plants	non existing	(C) Gas-carrying lines. (1) A line carrying blast furnace gas shall be purged before opening or entering. (2) A line carrying coke gas shall be purged before opening or entering.	update, added from existing section	
8	4123:1-9-03 Blast Furnace	(H) Scale and transfer cars. All scale and transfer cars shall be equipped with audible or visual warning devices and rail sweeps maintained in proper working order.	(H) Scale and transfer cars. All scale and transfer cars shall be equipped with audible and visual warning devices and rail sweeps maintained in proper working order.	The above listed areas of concern all say "audible or visual warning devices. In many cases workers do not see or hear a single warning device. The listed areas of the code should read audible and visual warning device.	
9	4123:1-9-04 Steel Making (D) Oxygen Furnaces	non existing	(5) Tapping platforms and charging floors (a) Tapping platforms and charging floors shall be provided with standard guard railings. This does not apply to pouring and mold preparation platforms (b) A guard shall be provided to protect the opening in the railing of a tapping platform used for spouts and runners, which may be removed when work is being performed at that point.	update Redistributed from (F) Open Hearth furnaces	
10	4123:1-9-04 Steel Making (E) Electric Furnaces	Non existing	(5) Tapping platforms and charging floors (a) Tapping platforms and charging floors shall be provided with standard guard railings. This does not apply to pouring and mold preparation platforms (b) A guard shall be provided to protect the opening in the railing of a tapping platform used for spouts and runners, which may be removed when work is being performed at that point.	Update, Redistributed from (F) Open Hearth Furnaces	
11	4123:1-9-04 Steel Making (F)	(F) Open Hearth Furnaces. (1) Tapping platforms and charging floors. (a) Tapping platforms and charging floors shall be provided with standard guard railings. This does not apply to pouring and mold preparation platforms. (b) A guard shall be provided to protect the opening in the railing of an open hearth tapping platform used for spouts or runners, which may be removed when work is being performed at that point. (2) Charging machines – warning devices. All open hearth charging machines shall be provided with an audible or visual warning device. (3) Furnace repairs. Fuel lines shall be blanked off while a furnace is being repaired. (4) Escape platform. Means of escape shall be provided for operators of open hearth pit cranes, consisting of an escape platform on the outside of the building or other effective arrangement which will be accessible from the crane cab in all its positions.	(F) Open Hearth Furnaces (1) Tapping platforms and charging floors. (a) Tapping platforms and charging floors shall be provided with standard guard railings. This does not apply to pouring and mold preparation platforms. (b) A guard shall be provided to protect the opening in the railing of an open hearth tapping platform used for spouts or runners, which may be removed when work is being performed at that point. (2) Charging machines – warning devices. All open hearth charging machines shall be provided with an audible or visual warning device. (3) Furnace repairs. Fuel lines shall be blanked off while a furnace is being repaired. (4) Escape platform. Means of escape shall be provided for operators of open hearth pit cranes, consisting of an escape platform on the outside of the building or other effective arrangement which will be accessible from the crane cab in all its positions.	Removed, Old equipment/process, no longer used due to new technology	
12	4123:1-9-05 Rolling operations, (H) Tubular Products	(H) Tubular products. (2) Signal systems. A signal system shall be provided between the charging and drawing ends of all heating furnaces.	(H) Tubular products. (2) Signal systems. A signal system shall be provided between the charging and discharging openings of all heating furnaces.	In sections (1) and (2) use "discharging or drawing", one or the other and use same consistency throughout	

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rule 4123:1-11

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: R.C. 4121.13 and 4121.47

2. The rule achieves an Ohio specific public policy goal.

What goal(s): Protect the safety and health of Ohio workers in the Laundering and Drycleaning industries.

3. Existing federal regulation alone does not adequately regulate the subject matter.
4. The rule is effective, consistent and efficient.
5. The rule is not duplicative of rules already in existence.
6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.
7. The rule has been reviewed for unintended negative consequences.
8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: In late January and early February, 2009, phone contact was made and electronic copies of proposed changes were forwarded to the committee members. Committee members reviewed material and submitted comments between February 1 and February 24. A face-to-face review committee meeting was held at OCOSH (BWC – Ohio Center for Occupational Safety & Health) in Pickerington, Ohio on Wednesday, February 25th.

Review Committee Members:

Textile Rental Services Association (TRSA)

- Charles Tomlinson – Director of Human Resources and Safety Compliance for TRSA
- Rick Gerlach – Director of Safety and Health for Cintas; member of TRSA Safety Committee.

Ohio Cleaners Association

- David Field – Executive Director, OCA
- Larry Long – President, OCA
- Timothy Blankenship, Sr. – President Elect, OCA
- Dennis Bell – Vice President, OCA
- George Gardner – Secretary/Treasurer, OCA

Unite Here (combination of the Hotel Employees & Restaurant Employees International Union and Union of Needle Trades, Industrial & Textile Employees)

- Eric Frumin – National Health and Safety Director
- Dallas Sells – State Director, Ohio State Council
- Vann Seawell – Manager, District Office Cincinnati
- Steve Ridley – Supervisor, Local 84 Toledo

9. The rule was reviewed for clarity and for easy comprehension.
10. The rule promotes transparency and predictability of regulatory activity.
11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.
12. The rule is not unnecessarily burdensome or costly to those affected by rule.
- If so, how does the need for the rule outweigh burden and cost? _____
13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

BWC Board of Directors
Executive Summary
Laundry and Dry Cleaning

Introduction

Chapter 4123:1-11 of the Ohio Administrative Code (OAC) contains BWC rules addressing Laundry and Dry Cleaning. BWC owns and maintains the revision and update process for this section of the OAC.

Background Law

Article II, Section 35, of the Ohio Constitution and R.C. 4121.13 allow BWC to adopt rules establishing worker safety standards. Article II, Section 35, and R.C. 4121.47 provide that if an injury is caused by a violation of a specific safety requirement (VSSR), the injured worker can receive an additional 15% to 50% of compensation payable in the claim. This additional award is a penalty to the employer.

OAC Chapter 4123:1-11 has no direct analog in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio's specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St 3d 3.

Proposed Changes

Recommendations (4)

4123:1-11-01 Scope and Definitions.

We recommend correcting a typographical error by changing the rule number from 4121:1-11-01 to 4123:1-11-01.

4123:1-11-01(A) Scope.

We recommend replacing "industrial commission" with "Superintendent of the Division of Safety & Hygiene" because the Industrial Commission no longer has jurisdiction over the rule.

4123:1-11-01(B)(6)(a) Definitions.

We recommend correcting a typographical error by changing the definition of a Class IA liquid from a liquid having a boiling point at or "above" 100 degrees Fahrenheit to a liquid having a boiling point at or "below" 100 degrees Fahrenheit. This change makes the definition consistent with OSHA's definition of a Class IA flammable liquid.

4123:1-11-04(A) Electrical Equipment.

In the restrictions on using electrical equipment when a flammable liquid is used for dry cleaning, we recommend changing the relevant standard to a flammable liquid with a flash point “below one hundred degrees Fahrenheit (37.8 degrees Celsius)” instead of a flammable liquid with a flash point “below 138.2 degrees Fahrenheit” This change makes the rule consistent with OSHA’s definition of a “flammable liquid.”

Review Committee Process

The review committee consisted of 12 representatives from both management and labor associations.

Participating management associations included:

- Ohio Cleaners Association
- Textile Rental Services Association (TRSA)

Participating labor associations included:

- Unite Here (a combination of the Hotel Employees and Restaurant Employees International Union and the Union of Needle Trades, Industrial and Textile Employees)

Unfortunately, attempts to involve representatives from the Service Employees International Union (SEIU) were unsuccessful.

Although none of the committee members objected to the four proposed changes, several members commented that the current rules should be reviewed more frequently to ensure that they keep pace with technological advances in the industry. All agreed that this project would require a long-term effort. A proposal was therefore made to form a standing committee to conduct an ongoing rules review and update.

Chapter 4123:1-11 Laundering and Dry cleaning

4123:1-11-01 Scope and definitions. (TO AMEND)

(A) Scope.

The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the ~~industrial commission~~ [superintendent of the division of safety and hygiene](#), equivalent protection is thereby secured.

These specific requirements supplement Chapter 4123:1-5 of the Administrative Code, "Specific Safety Requirements of the Ohio Bureau of Workers' Compensation Relating to All Workshops and Factories," and are minimum requirements of an employer for the protection of such employer's employees and no others and apply to places of employment wherein laundering or drycleaning processes are performed.

Installations or constructions built or contracted for prior to the effective date of any requirement shall be deemed to comply with the provisions of these requirements if such installations or constructions comply either with the provisions of these requirements or with the provisions of any applicable specific requirement which was in effect at the time contracted for or built.

(B) Definitions.

(1) "Air contaminants," as used in this rule, means hazardous concentrations of fibrosis-producing toxic dusts, toxic fumes, toxic mists, toxic vapors, or toxic gases, or a combination of these, suspended in the atmosphere.

(2) "Approved" means accepted or certified by a nationally recognized testing agency, such as "Underwriters' Laboratories," "Factory Mutual Engineering Corporation," or a responsible governmental agency.

(3) "Centrifugal extractor" means a machine used for removing moisture from textile articles by centrifugal action.

(4) "Drycleaning" means a method of cleansing wearing apparel, household furnishings and other textile materials by means of immersion and mechanical action in drycleaning solvents, either petroleum distillates or chlorinated hydrocarbons and fluorocarbons, with the addition of soaps and other cleansing aids.

(5) "Drying box or cabinet" means a heated, stationary enclosure used for drying, smoothing, or finishing textile articles.

(6) "Flammable liquid" means any liquid having a flashpoint below one hundred degrees Fahrenheit (37.8 degrees Celsius), except any mixture having components with flashpoints of one hundred degrees Fahrenheit (37.8 degrees Celsius) or higher, the total of which make up ninety-nine per cent or more of the total volume of the mixture. Flammable liquids shall be known as "Class I" liquids. "Class I" liquids are divided into three classes as follows:

(a) "Class IA" shall include liquids having flashpoints below seventy-three degrees Fahrenheit (22.8 degrees Celsius) and having a boiling point at or ~~above~~ below one hundred degrees Fahrenheit (37.8 degrees Celsius).

(b) "Class IB" shall include liquids having flashpoints below seventy-three degrees Fahrenheit (22.8 degrees Celsius) and having a boiling point at or above one hundred degrees Fahrenheit (37.8 degrees Celsius).

(c) "Class IC" shall include liquids having flashpoints at or above seventy-three degrees Fahrenheit (22.8 degrees Celsius) and below one hundred degrees Fahrenheit (37.8 degrees Celsius).

(7) "Guard" means the covering, fencing, railing, or enclosure which shields an object from accidental contact.

(8) "Guarded" means that the object is covered, fenced, railed, enclosed or otherwise shielded from accidental contact.

(9) "Ironer" means a machine with one or more rolls or heated surfaces used for drying, ironing, or smoothing textile articles.

(10) "Laundry press" or "drycleaning press" means a machine on which textile articles are dried or finished between two surfaces pressed together.

(11) "Nonflammable liquid" means any liquid or mixture of liquids which in its original state, or after continued use or agitation, or by distillation, will not burn in a closed cup tester, or which in any state, when mixed with air, gives off vapors which are noncombustible or nonexplosive.

(12) "Operator" means any employee assigned or authorized to work at the specific equipment.

(13) "Puff iron" means a heated device for smoothing or shaping textile articles.

(14) "Shall" is to be construed as mandatory.

(15) "Squeeze extractor" means any mechanically, pneumatically, or hydraulically operated compacting machine for removing excess liquid from textile articles by squeezing.

(16) "Still" means an apparatus to evaporate as a gas or vapor, volatile, flammable or nonflammable liquids used as a drycleaning solvent by means of heat and to condense the same in a cooling chamber or condenser as a purified product.

(17) "Substantial" means construction or such strength, of such materials, and of such workmanship that the object will withstand the wear, usage or shock for which it is designed.

(18) "Tumbler" means a machine in which textile articles are shaken out or dried by tumbling within a rotating cylinder.

(19) "Washer/extractor" means any machine in which the washing and extraction operations are performed.

(20) "Wringer" means one or more power-driven rolls used for removing excess liquid.

4123:1-11-02 General requirements. (No Change)

(A) Extractors.

(1) Centrifugal extractors.

(a) A centrifugal extractor or washer/extractor shall be equipped with an interlock that will disconnect the current to the drive motor and prevent starting rotation of the cylinder when the access door to the machine is open, but will not prevent the operator from inching the machine with the access door open. The interlock shall further prevent opening of the access door or cover while the cylinder is rotating.

(b) A centrifugal extractor or washer/extractor shall be installed in accordance with the manufacturer's recommendations so as to minimize any transmittal of vibration to adjacent areas, and it shall not be operated in excess of the maximum speed which shall be shown on the machine nameplate.

(2) Squeeze extractor.

A squeeze extractor shall be provided with a cover and interlock to prevent unloading the machine unless the pressure has been released and also to prevent applying pressure unless the cover has been properly closed. A steam,

hydraulically or pneumatically operated device shall be provided with a safety pressure relief valve.

(3) Extractors used in drycleaning with flammable solvents shall be equipped with a cover and basket rim of nonferrous metal or other nonsparking material.

(B) Drying equipment.

(1) Tumblers.

(a) A tumbler shall be equipped with an interlock that will prevent energizing the drive motor unless the shell door is closed, but will allow for the inching of the tumbler during loading and unloading.

(b) A tumbler shall be provided with means to prevent accidental self-closing of the shell door during loading and unloading of the machine; however, this requirement does not apply to side-hinged doors that tend to remain open.

(c) These requirements do not apply to tumblers designed without doors, where the work is continuously loaded and discharged.

(2) Drying box or cabinet.

A drying box or cabinet shall have door latches or locks that will enable an operator to open the doors readily from the inside and the outside.

(C) Finishing equipment.

(1) Ironers.

(a) An iron shall be equipped with a safety bar across the entire length of the feed roll or shoe so arranged that the striking of the bar will stop the machine.

(b) Hazardous nip points and the uncovered heated surface of an iron shall be guarded.

(2) Laundry presses and drycleaning presses.

Laundry presses and drycleaning presses, excluding hand- or foot-powered presses, shall be equipped with:

(a) A control device requiring concurrent use of both hands until the press has closed, and

(b) A release mechanism within easy reach of the operator that will instantly open the press; or

(c) Other means that will provide equivalent or greater protection.

(3) Puff iron.

The working surface of each puff iron when not in use shall be covered with at least one thickness of double-faced flannel and suitable smooth cover cloth or equivalent.

(4) Spreaders, feeders, folders, and stackers.

Spreaders, feeders, folders, and stackers shall be equipped with emergency stop buttons or bars within easy reach of the operator.

(5) Steam/air finishing equipment.

Tunnel-type equipment which provides access for an employee to enter shall have door latches or locks that will enable an operator to open the doors readily from the inside and the outside. A means to shut off all power to the system shall be provided, capable of being actuated by an employee from anywhere inside the cabinet.

(D) Miscellaneous equipment.

(1) Marking machines.

A marking machine shall be equipped with one of the following:

- (a) A spring compression device designed to prevent injury to fingers caught between the marking plunger and the platen;
- (b) A two-hand control;
- (c) A barrier guard designed to prevent contact with the marking plunger;
- (d) Other equivalent protection.

(2) Sewing machines.

A sewing machine shall be equipped with a guard permanently attached to the machine so that the operator's fingers cannot pass under the needle. The guard shall be of such design that the needle can be conveniently threaded without removing the guard.

(3) Packaging machines.

Packaging and tying machines shall be guarded to avoid accidental hitting of the operator or any other employee by rotating or moving components of the machine.

(4) Steam pipes.

All steam pipes exposed to contact seven feet or less from the floor or working platform shall be insulated or covered with a heat-resistive material or shall be otherwise guarded.

(5) Stopping devices.

Each power driven machine shall be provided with a power disconnect device so located as to be operable from the front of the machine.

(6) Drycleaning machines and drying tumblers.

Drycleaning machines and drying tumblers shall be grounded.

R.C. 119.032 review dates: 09/01/2004 and 03/01/2008

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.13

Rule Amplifies: 4121.13, Const. Art. II, Sec. 35

Prior Effective Dates: 4/1/64, 9/1/81

4123:1-11-03 Laundering. (No Change)

(A) Washing machines.

(1) A washing machine shall be equipped with an interlock that will disconnect the current to the drive motor and prevent starting rotation of the cylinder when the access door to the machine is open, but will not prevent the operator from inching the machine with the access door open.

(2) A washing machine or washer/extractor shall be provided with a means to prevent accidental self-closing of the shell or cylinder doors during loading or unloading of the machine; however, this requirement does not apply to side-hinged or over-the-center doors that tend to remain open.

(B) Wringers.

A wringer shall be equipped with a safety bar or other guard across the entire front of the feed or first pressure rolls, so arranged that the striking of the bar or guard will stop the machine.

R.C. 119.032 review dates: 09/01/2004 and 03/01/2008

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.13

Rule Amplifies: 4121.13, Const. Art. II, Sec. 35

Prior Effective Dates: 4/1/64, 9/1/81

4123:1-11-04 DRYCLEANING. (TO AMEND)

(A) Electrical equipment.

All electrical equipment shall be located outside the drycleaning room or be of an approved type for hazardous locations when any flammable liquid with a flash point below ~~138.2~~ one-hundred degrees Fahrenheit (37.8 degrees Celcius) is used for drycleaning.

(B) Stills and condensers.

Stills and condensers shall be of substantial construction, mounted on fire-resistive foundations and shall be of a type which will not expose the fluid or vapor to the atmosphere outside the still or condenser during any part of the process of reclamation.

(C) Brushing and prespotting.

(1) Brushing and prespotting operations with flammable liquid solvents shall be performed in a drycleaning room, on a brushing table or in a tub.

(2) Flammable liquid solvents used for brushing or prespotting shall be stored in approved portable safety containers.

(D) Drycleaning with nonflammable liquid solvents.

(1) Where nonflammable solvents giving off air contaminants are used for drycleaning in quantities of more than one gallon, such operations shall be performed in fluid-tight machines, systems or apparatus.

(2) Such apparatus shall be vented to the open air at a point no less than twenty-five feet from any window or other openings, and so used and operated to prevent the escape of air contaminants therefrom into the workrooms and work spaces.

OAC 4123:1 - 11 Laundering and Drycleaning

#	RULE	ORIGINAL PARAGRAPH	CHANGE	COMMENTS
1	4123:1-11-01	4121:1-11-01	4121:1-11-01 4123:1-11-01	Typo
2	4123:1-11-01 (A) Scope	The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the industrial commission , equivalent protection is thereby secured.	The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio Bureau of Workers' Compensation may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the industrial commission <u>Superintendent of the Division of Safety & Hygiene</u> , equivalent protection is thereby secured.	Remove words "industrial commission" and replace with "Superintendent of the Division of Safety & Hygiene". Rule no longer under jurisdiction of Industrial Commission
3	4123:1-11-01 (B)(6)(a) Definitions	(a) "Class IA" shall include liquids having flashpoints below seventy-three degrees Fahrenheit (22.8 degrees Celsius) and having a boiling point at or above one hundred degrees Fahrenheit (37.8 degrees Celsius)	(a) "Class IA" shall include liquids having flashpoints below seventy-three degrees Fahrenheit (22.8 degrees Celsius) and having a boiling point at or above <u>below</u> one hundred degrees Fahrenheit (37.8 degrees Celsius)	Remove "above" and replace with "below". Typo - per OSHA definition of a Class 1A Flammable Liquid
4	4123:1-11-04 (A) Electrical Equipment	All electrical equipment shall be located outside the drycleaning room or be of an approved typed for hazardzous locations when any flammable liquid with a flash point below 138.2 degrees Fahrenheit is used for drycleaning.	All electrical equipment shall be located outside the drycleaning room or be of an approved typed for hazardsous locations when any flammable liquid with a flash point below 138.2 <u>one hundred degrees</u> Fahrenheit (37.8 degrees Celsius) is used for drycleaning.	Per the OSHA definition of a "flammable liquid". See definition section 01(B)(6).
		Review Committee Members	Comments	Attend Review Com Meeting?
		Rick Gerlach - Director of Safety & Health for Cintas; member of TRSA Safety Committee	Spoke with Mr. Gerlach several times on phone. Sent electronic copy of info. He declined meeting invite.	No
		David Field - Executive Director for Ohio Cleaners Association, and the following Officers of the Ohio Cleaners Association: Larry Long, President; Timoth Blankenship, Sr., President Elect; Dennis L. Bell, Vice-President; George Gardner, Secretary/Treasurer	Spoke with Mr. Field. Sent electronic copy of info on Feb 11. Per his request, I contacted and sent electronic copies to 4 Ohio Cleaners Assn board members. Mr. Field indicated that he will attend review meeting. I received the following email on behalf of the Executive Board for the Ohio Cleaners Association: "The Ohio Cleaners Association Executive Committee has reviewed the proposed changes and has no objection to any of them. Thank you for the opportunity to view them in advance."	Yes

OAC 4123:1 - 11 Laundering and Drycleaning

	Charles Tomlinson - Director of Human Resources and Safety Compliance, Textile Rental Services Association (TRSA)	Spoke with Mr. Tomlinson several times. Sent electronic copy of info on Feb 11. Mr. Tomlinson forwarded info to local Ohio representatives. Mr. Tomlinson declined meeting invite. Email message: "I do not take issue with any of the four proposed revisions to the OAC as written." No response yet from local reps.	
	Vann Seawell - Manager, Unite Here, District Office in Cincinnati	Phone called on Feb 17, 18, 20. Left messages. Spoke with Mr. Seawell on Feb 23 and sent electronic copy. Vann forwarded info to Corporate Safety and Health Program Director, Belinda Thielen (see comments below)	
	Belinda Thielen - Unite Here, Occupational Safety & Health Program	Feb 24 - Belinda sent detailed response and expressed concerns about how outdated these rules are and the need to revise them to address modern processes and technology.	
	Steve Ridley - Supervisor, Unite Here, Local 84 Toledo	Phone called on Feb 17. Spoke with Steve on Feb 20. Sent electronic copy of info on Feb 20.	
	Eric Frumin - National Health and Safety Director, Unite Here, National	Left phone message for Mr. Frumin, Feb 11. No response	
	Service Employees International Union (SEIU) 1199	unable to obtain comments	

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rule 4123-1-1 Elevators

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: R.C. 4121.13 and 4121.47

2. The rule achieves an Ohio specific public policy goal.

What goal(s): Protect the safety and health of Ohio workers in the Elevator industry.

3. Existing federal regulation alone does not adequately regulate the subject matter.
4. The rule is effective, consistent and efficient.
5. The rule is not duplicative of rules already in existence.
6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.
7. The rule has been reviewed for unintended negative consequences.
8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: In late January and early February, 2009, phone contact was made and electronic copies of proposed changes were forwarded to the committee members. Committee members reviewed material and submitted comments between February 1 and February 24. A face-to-face review committee meeting was held at OCOSH (BWC – Ohio Center for Occupational Safety & Health) in Pickerington, Ohio on Wednesday, February 25th.

Review Committee Members:

Ohio Department of Commerce, Division of Industrial Compliance and the National Association of Elevator Safety Authority International

- Norm Martin – Chief Inspector for the Ohio Division of Industrial Compliance and President of the National Association of Elevator Safety Authority International

National Association of Vertical Transportation Professionals

- Curtis Forney – Executive Director, NAVTP

National Elevator Industry Inc. (NEII)

- LaJuan (LJ) Fleetwood – National Safety Coordinator for NEII and Safety Officer for Fujitec America.

International Union of Elevator Constructors

- John Neil (Neil) Rouse III – Business Agent for IUEC Local 37, Columbus (AFL/CIO)
- Tim Moennich – Business Agent for IUEC Local 17, Cleveland (AFL/CIO)

9. The rule was reviewed for clarity and for easy comprehension.
10. The rule promotes transparency and predictability of regulatory activity.
11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.
12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor’s Executive Order.

BWC Board of Directors
Executive Summary
Elevators

Introduction

Chapter 4123:1-1 of the Ohio Administrative Code (OAC) contains BWC rules addressing Elevators. BWC owns and maintains the revision and update process for this section of the OAC.

Background Law

Article II, Section 35, of the Ohio Constitution and R.C. 4121.13 allow BWC to adopt rules establishing worker safety standards. Article II, Section 35 and R.C. 4121.47 both provide that if an injury is caused by a violation of a specific safety requirement (VSSR), the injured worker can receive an additional 15% to 50% of compensation payable in the claim. This additional award is a penalty to the employer.

OAC Chapter 4123:1-1 has no direct analog in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio's specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St.3d 3.

Proposed Changes

1. 4123:1-1-02 (C)

Replace “department of industrial relations of the state” with “Ohio Department of Commerce, Division of Industrial Compliance” because the Division of Industrial Compliance now handles elevator inspection and certification process.

2. 4123:1-1-03(C)(2)

Correct the reference to flammable liquids having a flash point (closed cup) of less than one hundred thirty-eight and two-tenths degrees Fahrenheit to flammable liquids having a flash point (closed cup) of less than one hundred degrees Fahrenheit to be consistent with the definition of a “flammable liquid” per the Occupational Safety and Health Administration (OSHA) and the National Fire Protection Association (NFPA).

Review Committee Process

The review committee consisted of 5 representatives from management, labor and industry associations.

Participating industry associations included:

- Ohio Department of Commerce, Division of Industrial Compliance
- National Association of Elevator Safety Authority International
- National Association of Vertical Transportation Professionals

Participating management associations included:

- National Elevator Industry Inc. (NEII)

Participating labor associations included:

- International Union of Elevator Constructors

References:

In addition to feedback and input from the review committee members, the following references were used to complete this review:

- OSHA 1910.106 Flammable and Combustible Liquids
- OSHA 1917.116 Elevators and Escalators
- ANSI A17.1-2007 Safety Code for Elevators and Escalators
- Elevator World Inc., copyright 2006 – Elevator Industry Field Employees' Safety Handbook.

Chapter 4123:1-1 Elevators

4123:1-1-01 Scope and definitions.

(A) Scope.

The purpose of this chapter of the Administrative Code is to provide reasonable safety for life, limb and health of employees.

The specific requirements of this chapter are requirements for the protection of employees of an employer who has the possession of an elevator through ownership, lease or other property right under which said employer has continuous control of and responsibility for the operation of the elevator. This chapter does not afford protection requirements for employees of elevator manufacturers, installers or inspectors while any such employee is working on premises not in the legal possession of such employee's own employer or for employees of an employer other than the type described in the preceding sentence. The requirements of this chapter apply to all elevators that fall within the term "elevator", as that term is defined in division (A) of section [4105.01](#) of the Revised Code, except elevators installed and used exclusively within one dwelling unit.

Other chapters of the Administrative Code of specific safety requirements adopted by the Ohio bureau of workers' compensation may be applicable to some or all items related to some types of elevators. To the extent that any such other chapter may conflict with the requirements of this chapter, this chapter shall prevail. Where conflict does not exist, such other chapter shall be deemed to establish specific safety requirements that are supplementary to those contained in this chapter. The requirements of this chapter apply to elevators, whether installed, rebuilt or changed before or after the effective date hereof.

(B) Reserved.

HISTORY: Eff 12-1-79; 4-1-99

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.12, 4121.121, 4121.13

Rule amplifies: RC 4121.47

119.032 review date: 3/1/03; 3/1/98

4123:1-1-02 Certificate of operation.

(A) Reserved.

(B) Reserved.

(C) No elevator of an employer may be operated without a currently valid certificate of operation, issued by the ~~department of industrial relations of the state~~ Ohio Department of Commerce, Divisions of Industrial Compliance or similar authorization issued by a municipality having jurisdiction to do so. In the absence of a currently valid certificate or authorization, an injury or death of an employee incurred by reason of an elevator of the employer shall be presumed to be due to the violation of this specific safety requirement. Such presumption may

be rebutted if the employer shows that the absence of the certificate or authorization was due to factors beyond the control of the employer for one or more of the following reasons:

(1) The inspecting authority, with knowledge of the existence of the elevator, had failed to inspect it, which knowledge may be shown by

(a) Evidence of express notice having been forwarded to the appropriate authority,

(b) Evidence that a certificate or other authorization had been issued in the past for such elevator,

(c) Evidence from the files of the appropriate authority or,

(d) Other competent evidence demonstrating such knowledge by the appropriate authority;

Provided however, that no such authority shall be found to have had knowledge of the existence of an elevator after the elevator has once been taken out of service, except for maintenance or minor repairs. An elevator operated after having been so taken out of service and before it has been inspected by the appropriate authority shall be a violation of this specific safety requirement and the presumption prescribed above shall apply.

(2) The inspecting authority had inspected the elevator, approved it and the certificate of operation or other authorization had not been received by the employer.

(3) The inspecting authority had inspected the elevator and no deficiency noted in the inspection report contributed to the injury or death.

HISTORY: Eff 12-1-79

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35.

119.032 Review Date: 3-1-03

4123:1-1-03 Maintenance.

(A) Reserved.

(B) Reserved.

(C) During the period covered by the certificate of operation or other authorization (as required by rule 4121:1-1-02 of the Administrative Code) the employer shall maintain the elevator and appurtenances in the following respects:

(1) Hoistways and pits.

Hoistways and pits shall be kept clean and free of dirt and rubbish and shall not be used for storage purposes. Water shall not be allowed to accumulate in the pits.

(2) Machine rooms.

Machine room floors shall be kept clean and free from oil or grease. Articles or materials not necessary for the maintenance or operation of the elevator shall not be stored therein. Flammable liquids having a flash point (closed cup) of less than ~~one hundred thirty-eight and two-tenths~~ one hundred degrees Fahrenheit shall not be stored in such rooms.

(3) Escalator pit pans.

Escalator pit pans shall be kept clean of oil and refuse in order to reduce to a minimum any hazards resulting from accidental ignition.

(4) Tops of cars.

The tops of cars shall be kept clean and free from oil or grease and shall not be used for storing lubricants. Material not required for the operation of the elevator shall not be stored or carried on top of elevator cars.

(5) Additional requirement for hydraulic elevators.

Valves and cylinders shall be kept properly packed and the packing maintained to prevent leaks.

(6) Illumination.

Illuminating switches, fixtures and lights in the machine room, hoistway, pit, elevator car, landing sills and step treads shall be kept in operational condition at all times.

(7) Emergency communication.

Emergency signals and communication equipment shall be kept in operational condition at all times.

(8) Machine room doors.

Door closing and locking devices on the machine room or rooms shall be kept in operational condition at all times.

(9) Escalator steps, railings and handrails.

Bent or broken teeth on escalator steps and landing combs and broken or substantially damaged handrails shall be repaired or replaced promptly.

HISTORY: Eff 12-1-79

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35.

119.032 Review Date: 3-1-03

4123:1-1-04 Operating characteristics of the elevator.

(A) Reserved.

(B) Reserved.

(C) Between inspections by or on behalf of the authorized public agency, the employer shall promptly correct any operational deficiency that becomes evident in any one of the following controls, gates, devices or interlocks:

(1) The automatic controls that prevent the car from leaving the landing until the car and hoistway doors are closed;

(2) The semi-automatic gates that open and close at the hoistway landings;

(3) The reopening device activating automatic car and hoistway doors that prevent injury to an employee whose body or limb is interposed between the closing doors or door and jamb;

(4) The hoistway door interlocks that operate to remain closed at all times when the car is away from the landing and that operate to prevent the hoistway doors from being opened from outside the hoistway while the car is away from the landing;

(5) The leveling device that levels the car at the landing;

(6) The devices that prevent movement of the car in either direction while it is standing at the landing;

(7) The rubber beading or molding (astragal) on biparting doors.

HISTORY: Eff 12-1-79

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35.

119.032 Review Date: 3-1-03

4123:1-1-05 Operation of the elevator.

(A) Reserved.

(B) Reserved.

(C) No elevator shall be subjected to loads at any time in excess of its rated load as specified on the capacity plate, except where the elevator is designed and installed to carry one-piece loads greater than the rated load. Such one-piece loads may be carried in such elevator pursuant to the design specifications, but the design weight shown on the applicable capacity plate shall not be exceeded.

(D) Loads shall not be carried on top of or beneath the elevator car nor shall loads be carried that protrude over or below the car.

(E) No operator shall be required to remain on the elevator car while freight is being loaded on it.

(F) Freight elevators shall not be used to carry passengers, except employees in the pursuit of their duties and having the permission of the employer.

Appendix I

TABLE OF STANDARD MATERIALS AND DIMENSIONS

For Table – To obtain the appendix, table, image, etc. please call LSC's ERF Helpdesk at 614-387-2078 or send an email to erfhelpdesk@lsc.state.oh.us.

HISTORY: Eff 12-1-79

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 4121.131, Const. Art. II, Sec. 35.

119.032 Review Date: 3-1-03

#	RULE	ORIGINAL PARAGRAPH	CHANGE	COMMENTS
1	4123:1-1-02 (C)	(C) No elevator of an employer may be operated without a currently valid certificate of operation, issued by the department of industrial relations of the state, or similar authorization issued by a municipality having the jurisdiction to do so.	(C) No elevator of an employer may be operated without a currently valid certificate of operation, issued by the department of industrial relations of the state Ohio Department of Commerce, Division of Industrial Compliance , or similar authorization issued by a municipality having the jurisdiction to do so.	Remove the words "department of industrial relations of the state" and replace with "Ohio Department of Commerce, Division of Industrial Compliance". Certificates now issued by Division of Industrial Compliance.
2	4123:101-03 (C)(2)	Flammable liquids having a flash point (closed cup) of less than one hundred thirty-eight and two-tenths degrees Fahrenheit shall not be stored in such rooms	Flammable liquids having a flash point (closed cup) of less than one hundred one hundred thirty-eight and two-tenths degrees Fahrenheit shall not be stored in such rooms	Per the OSHA definition of a "flammable liquid".
		Review Committee Members	Comments	
		Curtis Forney - Executive Director, National Association of Vertical Transportation Professionals	Spoke with and sent electronic copy on Feb 12. Email response Feb 19: "I have no objections or comments to the proposed changes. Thanks for the opportunity to take part."	
		LJ Fleetwood - National Safety Coordinator for the National Elevator Industry Inc. (NEII)	Spoke with and sent electronic copy on Feb 11. Sent reminder notice to submit feedback and comments Feb 25th. Received electronic feedback (March 20) from Mr. Fleetwood stating: "I have no objections to the changes."	
		Norm Martin - Chief Inspector - Ohio Department of Commerce, Division of Industrial Compliance and President of National Association of Elevator Safety Authority International	Left phone message Jan 16. Spoke with and sent electronic copy Jan 21. Email response Feb 3: "I do not see any additional conflicts with our section's current rules" . Norm did attend the review committee meeting on Feb 25. He wanted to introduce himself and discuss the possibility of forming a standing committee for ongoing rule review.	

		<p>John Neil Rouse III - Business Agent for International Union of Elevator Constructors - Local 37 Columbus (AFL/CIO)</p>	<p>Left phone message and sent electronic copy Feb 11. Spoke with Neil on Feb 18. He will review and respond by deadline Feb 24. He will also try to contact Tim Moennich at Local 17. Sent reminder notice to submit feedback and comments Feb 25th. Sent additional request for review and feedback on March 20, 2009. On March 25, 2009 I received the following response from Neil Rouse: I agree to the changes you are making in 4123:1-1-02(c) and 4123:1-1-03(c)(2). Neil Rouse Business Representative IUVEC Local 37</p>	
		<p>Tim Moennich - Business Agent for International Union of Elevator Constructors - Local 17 Cleveland (AFL/CIO)</p>	<p>Left phone message and sent electronic copy Feb 11. Sent reminder notice to submit feedback and comments Feb 25th. Sent additional request for review and feedback on March 20, 2009. No response.</p>	

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rule 4123:1-13 Rubber and Plastics Industries

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: R.C. 4121.13

2. The rule achieves an Ohio specific public policy goal.

What goal(s): The rule promotes safe workplaces.

3. Existing federal regulation alone does not adequately regulate the subject matter.

4. The rule is effective, consistent and efficient.

5. The rule is not duplicative of rules already in existence.

6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. The rule has been reviewed for unintended negative consequences.

8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: Employee and employer representatives and associations in the rubber and plastics industries were invited to provide feedback after the internal review through e-mails and phone calls. The participating Review Committee members offered written comments. All agreed that the proposed change is appropriate.

9. The rule was reviewed for clarity and for easy comprehension.

10. The rule promotes transparency and predictability of regulatory activity.

11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

BWC Board of Directors
Executive Summary
Rubber and Plastics Industries

Introduction

The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. These specific requirements for the rubber and plastics industries supplement those of Chapter 4123:1-5 of the administrative code, “Specific Safety requirements of the Ohio BWC relating to all workshops and factories.

Background Law

Article II, Section 35 of the Ohio Constitution and R.C. 4121.13 allow BWC to adopt rules establishing worker safety standards. Article II, Section 35 and R.C. 4121.47 both provide that if an injury is caused by a violation of a specific safety requirement (VSSR), the injured worker can receive an additional 15% to 50% of compensation payable in the claim. This additional award is a penalty to the employer.

OAC Chapter 4123:1-13 has no direct counterpart in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio’s specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St 3d 3

Proposed Change

The Rubber and Plastics Industries (4123:1-13) code was reviewed according to the Governor’s Common Sense Business Regulation Review. In order to maintain consistency with other regulations it was compared to applicable ANSI (American National Standards Institute) and OSHA codes. One change is offered to align our rule with the applicable ANSI standard. Specifically, we recommend that the definition of the word “calendar” be expanded to include all metal rolls as opposed to the narrow category of “heavy internally heated or cooled” rolls as the present rule provides. This proposed change would not only make our rule consistent with the applicable ANSI standard, but also bring it up to date technologically.

Review Committee Process

The Review Committee consisted of one representative each from labor and management.

Participating industry association: Ohio Polymer, Inc.

Participating labor organization: United Steelworkers

Six employer representatives (including industry associations) and four employee representatives were contacted by email and telephone for input. The rules were forwarded to all contacts for review. The group Polymer Ohio provided feedback through their experts in the field as did the United Steelworkers. All agreed that the proposed change is appropriate.

Chapter 4123:1-13 Rubber and Plastic Industries

4123:1-13-01 Scope and definitions. (Amended)

(A) Scope.

The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the industrial commission of Ohio may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the industrial commission, equivalent protection is thereby secured.

These specific requirements supplement those of Chapter 4121:1-5 of the Administrative Code, "Specific Safety Requirements of the Industrial Commission of Ohio Relating to All Workshops and Factories," and are minimum requirements of an employer for the protection of such employer's employees and no others and apply to the rubber and plastic industries where crude, synthetic, or reclaimed rubber or plastics are processed.

Equipment used in the laboratory varies greatly from manufacturing equipment in size, speed, and height and is specifically excepted from the detailed provisions of these requirements; however, equivalent protection shall be provided.

Installations or constructions built or contracted for prior to the effective date of any requirement shall be deemed to comply with the provisions of these requirements if such installations or constructions comply either with the provisions of these requirements or with the provisions of any applicable specific requirement which was in effect at the time contracted for or built.

(B) Definitions.

(1) "Approved" means accepted or certified by a nationally recognized testing agency, such as "Underwriters' Laboratories," "Factory Mutual Engineering Corporation," or a responsible governmental agency.

(2) "Bite" ("nip point") means the point of meeting between any two in-running rolls.

(3) "Calender" means a machine equipped with two or more ~~heavy internally heated or cooled~~ metal rolls revolving in opposite directions and used for continuously sheeting or plying up rubber or plastic compounds and for frictioning or coating fabric with rubber or plastic compounds.

(4) "Danger zone" means the point of operation where a known critical hazard exists.

(5) "Factor of safety" means the ratio between the ultimate breaking stress and the working stress of the material, structure or device. For example, the term "factor of safety of four" means that the material, structure or device shall be constructed of such strength that the maximum load will be one-fourth the designed ultimate breaking load. Where other factors of safety appear, they shall apply in the same manner. The standards of the "American Society for Testing Materials" shall be used in determining the strength of material except as otherwise provided herein.

(6) "Guard" means the covering, fencing, railing, or enclosure which shields an object from accidental contact.

(7) "Guarded" means that the object is covered, fenced, railed, enclosed or otherwise shielded from accidental contact.

(8) "Mill" means a machine consisting of two adjacent, heavy rolls, set horizontally, which revolve in opposite directions (i.e., toward each other as viewed from above) used for the mechanical working of rubber or plastic.

(9) "Operator" means any employee assigned or authorized to work at the specific equipment.

(10) "Pinch point" ("shear point") means any point at which it is possible to be caught between the moving parts of a machine, or between the moving and stationary parts of a machine, or between the material and the moving part or parts of a machine.

(11) "Point of operation" means the point or points at which the material is placed in or removed from the machine.

(12) "Securely fastened" means that the object or thing referred to shall be substantially fixed in place.

(13) "Safety trip" means a device for stopping the travel of rolls when the device is actuated in an emergency.

(14) "Shall" is to be construed as mandatory.

(15) "Substantial" means construction of such strength, of such materials, and of such workmanship that the object will withstand the wear, usage, or shock for which it is designed.

HISTORY: Eff (Amended) 4-1-64; 1-1-82
Rule promulgated under: RC Chapter 119.
Rule authorized by: RC4121.131, Const. Art. II, Section 35

4123:1-13-02 Mills. (No change)

(A) Mill roll height.

All mills shall be installed so that the top of the operating rolls is not less than fifty inches above the level on which the operator stands, irrespective of the size of the mill. This distance shall apply to the actual working level, whether it be at the general floor level, in a pit, or on a platform.

(B) Mill emergency stop controls.

(1) Safety trip control.

A safety trip control shall be provided in front and in back of each mill to stop the mill when it is tripped. It shall be accessible and shall operate readily on contact. The safety trip control shall be one of the following types or a combination thereof.

(a) Pressure-sensitive body bars.

Installed at front and back of each mill having a roll height of forty-six inches or more, these bars shall operate readily by pressure of the mill operator's body.

(b) Safety trip rod.

Installed in the front and in the back of each mill and located within two inches of a vertical plane tangent to the front and rear rolls. The trip rods shall be within easy reach of the operator but no more than seventy-two inches above the level on which the operator stands. The trip rods shall be accessible and shall operate readily whether the rods are pushed or pulled.

(c) Safety or wire center cord.

Installed at the front and back of each mill and located within two inches of a vertical plane tangent to the front and rear rolls. The cables shall be within easy reach of the operator but no more than seventy-two inches above the level on which the operator stands. The trip cable or wire center cord shall operate readily whether cable or cord is pushed or pulled.

(d) Fixed guards.

Where a safety trip rod, safety trip wire cable, or wire center cord is used, a fixed bar across the front and one across the back of the mill approximately forty inches vertically above the working level and twenty inches horizontally from the crown face of the roll shall be used.

(2) Other equipment.

All other equipment, such as a mill divider, support bars, spray pipes, feed conveyors, strip knives, etc., shall be located in such a manner as to avoid interference with access to or operation of safety devices.

(C) Protection by location.

Where a mill is so installed that employees cannot normally reach through, over, under, or around to come in contact with the roll bite or be caught between a roll and an adjacent object, then, provided such elements are made a fixed part of a mill, safety control devices listed in paragraph (B) of this rule shall not apply.

(D) Trip and emergency switches.

All trip and emergency switches shall not be of the automatically resetting type, but shall require manual resetting.

(E) Emergency stopping limits.

(1) Determination of distance of travel.

All measurements on mills shall be taken with the rolls running empty at maximum operating speed. Stopping distances shall be expressed in inches of surface travel of the roll from the instant the emergency stopping device is actuated.

(2) When tripped by the emergency stopping device all mills, irrespective of the size of the rolls or their arrangement (individually or group-driven), shall stop within a distance, as measured in inches of surface travel, no greater than one and one-half per cent of the peripheral no-load surface speeds of the respective rolls as determined in feet per minute. (See "Figure 1.")

Figure: Mill Stopping Distances for Various Roll Speeds

For Figure – To obtain the appendix, table, image, etc. please call LSC's ERF Helpdesk at 614-387-2078 or send an email to erfhelpdesk@lsc.state.oh.us.

HISTORY: Eff (Amended) 4-1-64; 1-1-82
Rule promulgated under: RC Chapter 119.
Rule authorized by: RC 4123.13, Const. Art. II, Section 35

4123:1-13-03 Calenders. (No Change)

(A) Calender safety controls.

(1) Safety trip, face.

A safety trip rod, cable, or wire center cord shall be provided across each pair of in-running rolls, extending the length of the face of the rolls. It shall be readily accessible and shall operate whether pushed or pulled. The safety tripping devices shall be located within easy reach of the operator and no more than seventy-two inches above the level on which the operator stands.

(2) Safety trip, side.

On both sides of the calender and near each end of the face of the rolls, there shall be a cable or wire center cord connected to the safety trip. These lines shall be no more than twelve inches from the faces of the respective rolls and no less than two inches from the calender frame. They shall be anchored to the frame no more than six inches from the floor or operator's platform and shall operate readily when pushed or pulled.

(B) Protection by location.

Where a calender is so installed that employees cannot normally reach through, over, under, or around to come in contact with the roll bite or be caught between a roll and an adjacent object, then, provided such elements are made a fixed part of a calender, safety control devices listed in paragraph (A) of this rule shall not apply.

(C) Trip and emergency switches.

All safety trip and emergency switches shall not be of the automatically resetting type, but shall require manual resetting.

(D) Stopping limits for calenders.

(1) Determination of distance of travel.

Measurements on calenders shall be taken on the drive roll. All measurements shall be taken with the rolls running empty at maximum operating speed. Measurements shall start when the safety device is tripped.

(2) Stopping limits.

(a) All calenders, irrespective of size of the rolls or their configuration, shall stop within a distance, as measured in inches of surface travel, no greater than one and three-quarters per cent of the peripheral no-load surface speeds of the respective calender rolls as determined in feet per minute. (See "Figure 2.")

(b) Where speeds above two hundred fifty feet per minute, as measured on the surface of the drive roll are used, stopping distances of more than one and three-quarters per cent are permissible. Such stopping distances shall be subject to engineering determination.

Figure: Calender Stopping Distances for Various Roll Speeds

For Figure – To obtain the appendix, table, image, etc. please call LSC's ERF Helpdesk at 614-387-2078 or send an email to erfhelpdesk@lsc.state.oh.us.

HISTORY: Eff (Amended) 4-1-64; 1-1-82
Rule promulgated under: RC Chapter 119.
Rule authorized by: RC 4123.13, Const. Art. II, Sec. 35

4123:1-13-04 Other rubber and plastic processing machines.
(No change)

(A) Extruders, strainers and tubing machines.

(1) Manually fed extruders, strainers and tubing machines shall have a hopper so designed as to allow a distance of no less than ten inches from the top edge of the hopper to the highest point of the screw or worm of the extruder, strainer or tubing machine.

(2) Rotating knives that may be located at the discharge end of extruders, strainers and tubing machines shall be guarded with interlocks provided to shut off the power if the guard is opened or removed.

(B) Rubber and plastic cutters.

(1) Cutters – circular cut-off power knives or blades.

Circular cut-off power knives or blades, used to cut rubber or plastic stock to length, shall be guarded.

(2) Manually fed guillotine bale cutters.

All manually fed guillotine bale cutters shall be equipped with a two-hand continuous control or a one-hand continuous control so located that the operator cannot reach the control and the danger zone at the same time.

(C) Wind-ups and power driven auxiliary rolls or drums.

Wind-ups, power driven auxiliary rolls or drums and festoon rolls, around which material travels, when exposed to contact, shall be provided with readily accessible safety trips or devices to disengage them from their immediate source of power.

(D) Hose winding machines.

Hose winding machines shall have a clutch or starting treadle running the full length of the machine so that the machine will stop automatically when the clutch or starting treadle is released.

(E) Curing or vulcanizing equipment.

An interlocking device shall be provided to prevent the admission of water, steam, or pressure into the unit before it is fully closed and locked to prevent the unit from being opened while it is under any residual pressure.

(1) Tire vulcanizers.

(a) Single or dual tire vulcanizers, which open and close by electrical power, shall be equipped with a safety bar or other mechanical sensing device installed at or across the front of the curing unit which will prevent the closing motion of the unit should the bar or other safety device be activated by contact with any portion of the employee's body as the unit closes.

(b) Brakes.

Brake capacity shall be sufficient to stop the motion quickly and capable of holding the moving parts at any point in their travel. Where friction brakes, equipped with release devices, are provided for stopping or holding moving parts of a press, postcure inflator, or accessories, they shall be set with compression springs and released by electrical, pneumatic, or mechanical means. Brakes that require electrical or pneumatic power to apply a holding force shall not be used.

(2) Horizontal curing units (vulcanizers).

A locking device shall be provided on doors in the open position to prevent them from closing accidentally on employees working underneath.

(3) Platen presses.

(a) Inserting or removing molds.

Molds shall be provided with lugs or handles for use when inserting or removing the molds from the platen presses by hand, otherwise a hook shall be provided for the purpose.

(b) Track stops.

Where tracks are used with platen presses they shall be equipped with stops to prevent the molds from being pulled or pushed off the tracks.

(c) Work tables.

(i) Stops.

Work tables used with platen presses ranging in sizes up to and including twenty-four inches wide by twenty-four inches long shall be equipped with stops to prevent the molds from being accidentally pulled off the front of the bench.

(ii) Size.

Work tables used with platen presses shall be no smaller than the press platens.

(4) Molding machines.

(a) Compression and transfer molding.

Compression and transfer molding machines shall be equipped with either:

(i) A metal gate which, when closed, completely encloses the molding area between the two front tie rods or side columns of the press and between the fixed and moving platens of the press and which is interlocked so that the press will not operate unless the gate is closed, or

(ii) Two-hand controls which must remain depressed during press closing.

(b) Injection and blow molding.

(i) The molding area of injection and blow molding machines shall be guarded by an interlocked safety door or gate with an insert of safety glass, impact-resistant plastic, or expanded metal.

(ii) Moving parts of the machine and mold not guarded by the safety door or gate shall be guarded by fixed or interlocked guards.

Promulgated Under: 119.03

Statutory Authority: 4123.13

Rule Amplifies: 4123.13, Const. Art. II, Sec. 35

Prior Effective Dates: 4/1/64, 1/1/82

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rule 4123:1-17 Window Cleaning

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: R.C. 4121.13 and 4121.47

2. The rule achieves an Ohio specific public policy goal.

What goal(s): Protect the safety and health of Ohio workers in the Window Cleaning industry.

3. Existing federal regulation alone does not adequately regulate the subject matter.

4. The rule is effective, consistent and efficient.

5. The rule is not duplicative of rules already in existence.

6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. The rule has been reviewed for unintended negative consequences.

8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: In February, 2009, Deborah Izzo, General Manager of Globe Window Cleaning, Inc. was contacted and agreed to participate in the review of OAC 4123:1-17 Window Cleaning. Ms. Izzo's views were expressed by telephone and email communication. She agreed with all of the changes proposed during the internal review process. Efforts to contact other stakeholders were not successful.

9. The rule was reviewed for clarity and for easy comprehension.

10. The rule promotes transparency and predictability of regulatory activity.

11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

Introduction

Chapter 4123:1-17 of the Ohio Administrative Code (OAC) contains BWC rules addressing Window Washing. BWC owns and maintains the revision and update process for this section of the OAC.

Background Law

Article II, Section 35 of the Ohio Constitution and R.C. 4121.13 allow BWC to adopt rules establishing worker safety standards. Article II, Section 35 and R.C. 4121.47 both provide that if an injury is caused by a violation of a specific safety requirement (VSSR), the injured worker can receive an additional 15% to 50% of compensation payable in the claim. This additional award is a penalty to the employer.

OAC Chapter 4123:1-17 has no direct analog in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio's specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St 3d 3.

Proposed Changes

Recommendations:

4123:1-17

Correct a typographical error by changing the rule number from 4121:1-17 to 4123:1-17.

4123:1-17-01 Scope and Definitions

Add numbering to the Scope, section (A) of the code. The scope does not currently have any numbering. Add: **(A) Scope**

4123:1-17-02(C) Ladders

Add language to the code to allow the use of harnesses in addition to safety belts and lifelines. Add: **or harness**

Correct a typographical error by adding the word Code, to complete the last sentence. Add: **Code**

4123:1-17-04(D)(1) Roof car suspended platforms – window cleaning

Correct a typographical error by adding a space between five and sixteenths-inch diameter.

4123:1-17-04(G) Roof car suspended platforms – window cleaning

Add language to the code to allow the use of harnesses in addition to safety belts and lifelines. Add: **or harness**

4123:1-17-05(F) Boatswain's Chairs

Add language to the code to allow the use of suction cups in addition to tie-ins to prevent them from swaying during the window cleaning operation. Add: **or suction cups**

4123:1-17-06(A) Safety Belts, safety harnesses, lifelines and lanyards

Reduce the static load for employee safeguarding from five thousand four hundred pounds to five thousand pounds to be compatible with nationally recognized standards. Remove: **four hundred**

Review Committee Process

In February, 2009, Deborah Izzo, General Manager of Globe Window Cleaning, Inc. was contacted and agreed to participate in the review of OAC 4123:1-17 Window Cleaning. Ms. Izzo's views were expressed by telephone and email communication. She agreed with all of the changes proposed during the internal review process. Efforts to contact other stakeholders were not successful.

4123:1-17-01 Scope and Definitions. (amended)

Deleted: 1

(A) Scope.

The purpose of these requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the industrial commission, equivalent protection is thereby secured.

These specific safety requirements supplement Chapter 4123:1-5 of the Administrative Code, "Specific Safety Requirements of the Ohio Bureau of Workers' Compensation Relating to all Workshops and Factories," but, to the extent of inconsistency between these and any provision of Chapter 4123:1-5 of the Administrative Code, these shall apply. These requirements are minimum requirements of an employer for the protection of such employer's employees and no others and constitute protective standards for all employees while they are engaged in washing or cleaning windows on the outside and, where working from a level ten feet or more above the floor, on the inside of buildings except employees so engaged in or on a building containing no more than two full stories above ground level in which all of the units are residential and except employees so engaged in or on a single residential unit when employed to do so by the occupant of that unit. These requirements do not apply to a window opening onto a railed fire escape balcony or other railed balconies no less than two feet wide, nor more than twelve inches below the window sill, provided that the railing is no less than forty-two inches high.

Installations or constructions built or contracted for prior to the effective date of any requirement shall be deemed to comply with the provisions of these requirements if such installations or constructions comply either with the provisions of these requirements or with the provisions of any applicable specific requirement which was in effect at the time contracted for or built.

(B) Definitions.

- (1) "Anchor" means an installation near a window to which a window cleaner's safety belt is attached.
- (2) "Approved" means accepted or certified by a nationally recognized testing agency, such as "Underwriters' Laboratories," "Factory Mutual Engineering Corporation" or a responsible governmental agency.
- (3) "Boatswain's chair" means a seat supported by slings attached to a suspended rope, designed to accommodate one employee in a sitting position.
- (4) "Factor of safety" means the ratio between the ultimate breaking strength and the working stress of the material, structure or device. For example, the term "factor of safety of four" means the materials, structure or device shall be constructed of such strength that the maximum load will be one-fourth the designed ultimate breaking load. Where other factors of safety appear, they shall apply in the same manner. The

standards of the "American Society for Testing Materials" shall be used in determining the strength of material except as otherwise provided herein.

- (5) "Rated load" means the combined weight of employees, tools, equipment, and other material which the working platform is designed and installed to lift.
- (6) "Roof car" means a structure for the suspension of the working platform, providing for its horizontal movement to working positions.
- (7) "Roof car suspended platform" means equipment to provide access to the exterior of a building consisting of a suspended power-operated working platform, a roof car, and the required operating and control devices.
- (8) "Roof-powered platform" means the working platform, of a roof car suspended platform, having the raising and lowering mechanism located on a roof car.
- (9) "Safety belt" or "safety harness" means a device worn around the body which, by reason of its attachment to a lanyard and lifeline or a structure, will prevent an employee from falling.
- (10) "Safety harness" - see "safety belt."
- (11) "Self-powered platform" means a working platform, of a roof car suspended platform, having the raising and lowering mechanism located on the working platform.
- (12) "Shall" is to be construed as mandatory.
- (13) "Standard guard railing" means a substantial barrier constructed in accordance with paragraph (E) of rule 4123:1-5-02 of the Administrative Code.
- (14) "Substantial" means construction of such strength, of such materials, and of such workmanship that the object will withstand the wear, usage, or shock for which it is designed.
- (15) "Swinging scaffold" means a power- or manually-operated platform suspended by two or more lines and independent of the building except for attachment at the roof or parapet.
- (16) "Traveling cable" means a cable made up of electrical or communication conductors or both, and providing electrical connection between the working platform and the roof car or other fixed point.
- (17) "Two-point suspension scaffold" means a scaffold suspended from overhead supports the platform of which is supported by stirrups or hangers at two points to permit raising or lowering.
- (18) "Working platform" means the suspended structure arranged for vertical travel which provides access to the exterior of the building.

Effective: 12/1/04

Prior Effective Dates: 4/1/64, 1/1/83

4123:1-17-02 Ladders. (amended)

All ladders used in window cleaning operations shall comply with the requirements of paragraph (C) of rule 4123:1-5-03 of the Administrative Code in addition to the following:

(A) Metal ladders shall not be provided for use where exposed electrical contacts are present.

(B) Metal ladders shall not be provided when damaging chemicals are to be used, unless the ladder used has been appropriately treated to protect it from such chemicals.

(C) The use of ladders with hooks attached, to be hung on or over a parapet wall or other projection is prohibited in window cleaning operations unless tied back in the manner prescribed for scaffolds in paragraph (D) of rule 4123:1-17-03 of the Administrative Code, and safety belts or harness and lifelines are provided in compliance with rule 4123:1-17-06 of the Administrative Code.

Effective: 12/1/04

Prior Effective Dates: 4/1/64, 1/1/83

4123:1-17-03 Swinging scaffolds. (no change)

(A) Swinging scaffold platforms shall be no less than twenty inches wide overall. The platform shall be securely fastened to the hangers by U-bolts or by other equivalent means.

(B) The hangers of swinging scaffolds shall be capable of sustaining four times the rated load.

(C) When hoisting machines are used on swinging scaffolds, such machines shall be of an approved design.

(D) The roof irons or hooks shall be of proper size and design, securely installed and anchored. Tiebacks of three-quarter-inch manila rope, or the equivalent, shall serve as an additional means of anchorage, which shall be installed as nearly as possible at right angles to the face of the building and shall be secured to a structurally sound portion of the building. When no structurally sound portion of the building permits installation substantially at right angles to the face of the building, two tiebacks shall be used and secured at substantially equal and opposing acute angles to the right angle. Where outrigger beams, which shall consist of structural metal, or davits are used, they shall be securely fastened or anchored to the frame or floor system of the building or structure.

(E) Swinging scaffolds shall be suspended by wire, synthetic fiber, or natural fiber ropes capable of supporting no less than six times the rated load. All other components shall be capable of supporting no less than four times the rated load.

(F) Only treated or protected fiber rope or its equivalent shall be used for or near any work involving the use of corrosive chemicals.

(G) The sheaves of all blocks shall fit the size and type of rope used.

(H) No more than two employees shall be required to be on a two-point suspension scaffold designed for a working load of five hundred pounds. No more than three employees shall be required to be on a two-point suspension scaffold designed for a working load of seven hundred pounds.

(I) The employer shall provide an approved safety belt or harness and lifeline for each employee working on a swinging scaffold in compliance with rule 4123:1-17-06 of the Administrative Code.

(J) Employees shall not be required to use a bridge, or to move directly, between one swinging scaffold and another.

(K) Each swinging scaffold shall be securely fastened to the building or structure at each work location to prevent it from swaying. Window cleaners' anchors shall not be used for this purpose. Tie-in anchors designed for the rated load of the scaffold may be used.

(L) The platform of every swinging scaffold shall be capable of sustaining four times the rated load.

(M) All swinging scaffolds shall have standard guardrails and toeboards on all unprotected sides of platforms.

(N) The free ends of fall lines from scaffolds shall be guarded to prevent tangling or snagging.

Effective: 12/1/04

Prior Effective Dates: 4/1/64, 1/1/83

4123:1-17-04 Roof car suspended platforms - window cleaning. (amended)

(A) Roof car.

(1) The horizontal speed of a roof car shall be no more than fifty feet per minute.

(2) A roof car may not be moved horizontally unless means are in place to prevent the car from moving outside the areas provided for roof car travel.

- (3) The roof car shall be designed and installed in such a manner as to remain stable and upright under every loading condition.
- (4) A roof car shall be so positioned and anchored to the structure as to insure that the working platform is placed and retained in proper position for vertical travel.
- (5) The operating device controlling movement of a roof car shall be of the continuous pressure weather-proof electric type and shall be located on the roof car, the working platform, or both. If located on both, such operating devices shall be interlocked so that control is possible only from one at a time.
- (6) The operating device controlling movement of a roof car shall not be operable until the working platform is at its uppermost position for travel and is not in contact with the building face or fixed vertical guides in the face of the building, and until all protective devices and interlocks are in a position for movement.
- (7) If the access to the roof car at any point of its travel is not over the roof area, standard guardrails with self-closing, self-locking gates shall be provided on the roof car.

(B) Working platforms.

- (1) The working platform shall be of girder or truss construction and shall be capable of supporting its rated load under any position of loading.
- (2) Each working platform shall bear the manufacturer's load rating plate, conspicuously posted and legible, stating the maximum permissible load.
- (3) The vertical speed of a working platform suspended by four or more hoisting ropes shall be no more than seventy-five feet per minute.
- (4) The vertical speed of a working platform suspended by less than four hoisting ropes shall be no more than thirty-five feet per minute.
- (5) The working platform shall be no less than twenty-four inches wide.
- (6) The working platform shall be provided with toeboards and with permanent guardrails no less than thirty-six inches high, and no more than forty-two inches high at the front (building side). At the rear, and on the sides, a standard guardrail and toeboard shall be provided. An intermediate guardrail shall be provided around the entire platform between the top guardrail and the toeboard.
- (7) The platform flooring shall be of the nonskid type.
- (8) Where access gates are provided, they shall be self-closing and self-locking. Such gates are required where access to the working platform is not over the roof area.
- (9) A means shall be provided to prevent inadvertent horizontal movement of the working platform.
- (10) The operating device controlling vertical movement of the working platform shall be located on the working platform and shall be of the continuous pressure weatherproof electric type.
- (11) The operating device controlling vertical movement shall be operable only when all electrical protective devices and interlocks on the working platform are in normal operating position, and the roof car is at an established operating point.
- (12) On roof-powered platforms, an emergency electric operating device shall be provided near the hoisting machine for use in the event of failure of the normal operating device for the working platform or failure of the traveling cable system.

This emergency device shall be mounted in a locked compartment and shall have a legend mounted thereon reading: "For Emergency Operation Only. Establish Communication With Personnel On Working Platform Before Use." A key for unlocking the compartment housing the emergency operating device shall be mounted in a break-glass receptacle located near the device.

(C) Hoisting equipment.

- (1) Hoisting equipment shall consist of a power-driven drum or drums contained in the roof car (i.e., roof-powered platform) or contained on the working platform (i.e., self-powered platform).
- (2) Hoisting equipment shall be power-operated in both up and down directions.
- (3) Where exposed to contact, rotating shafts, drums, couplings, other mechanisms and gears shall be guarded.
- (4) Friction devices or clutches shall not be used for connecting the main driving mechanism to the drum or drums. Belt- or chain-driven machines are prohibited.
- (5) Hoisting motors shall be electric and of weather-proof construction.
- (6) Hoisting motors shall be directly connected to the hoisting machinery. Motor couplings, if used, shall be of steel construction.
- (7) Hoisting machines shall have two independent braking means, each designed to stop and hold the working platform with one hundred twenty-five per cent of rated load.

(D) Hoisting ropes and winding drums.

- (1) Each hoisting rope shall be made of wire and shall be no less than five sixteenths-inch diameter.
- (2) Working platforms shall be suspended by no less than two ropes with a safety factor of ten as calculated under the following formula:
$$F = S \times N \div W$$

Where
S = manufacturer's rated breaking strength of one rope
N = number of ropes under load
W = maximum static load on all ropes with the platform and its rated load at any point of its travel
- (3) Where winding drums are used, the rope shall be wound in level layers.
- (4) Winding drums shall have no less than three turns of rope remaining when the working platform is at its lowest possible point of travel.
- (5) Where the working platform is suspended by more than two ropes, the nondrum ends of the ropes shall be provided with individual shackle rods which will permit individual adjustment of rope lengths.
- (6) The lengthening or repairing of wire ropes by splicing is prohibited.
- (7) More than two reverse bends in each rope are prohibited.
- (8) Wire rope shall not be used if, in any length of eight diameters, the total number of visible broken wires exceeds ten per cent of the total number of wires, or if the rope shows other signs of excessive wear, corrosion, or defect.

(E) Electrical protective devices.

- (1) Electrical protective devices and interlocks shall be of the weather-proof type.
- (2) When a traveling cable storage reel is used, an electric contact shall be provided and so connected that it will cause the relay for vertical travel to open if the tension on the traveling cable exceeds safe limits.
- (3) An automatic overload device shall be provided to cut off electrical power to the circuit in all hoisting motors for travel in the up direction, should the load applied to the hoisting ropes at either end of the working platform exceed one hundred twenty-five per cent of its normal tension with rated load as shown on the manufacturer's data plate on the working platform.
- (4) An automatic device shall be provided for each hoisting rope which will cut off electrical power to the hoisting motor or motors in the down direction and will apply the brakes if any hoisting rope becomes slack.
- (5) Upper and lower directional limit devices shall be provided to prevent the travel of the working platform beyond the normal upper and lower limits of travel.
- (6) Directional limit devices, if driven from the hoisting machine by chains, tapes, or cables, shall incorporate a device to disconnect the electric power from the hoisting machine and apply both the primary and secondary brakes in the event of failure of the driving means.
- (7) On platforms with four or more ropes, final terminal stopping devices for the working platform shall be provided as a secondary means of preventing the working platform from over-traveling at the terminals.
- (8) Emergency stop switches shall be provided in or adjacent to each operating device.
- (9) Electrical cord strain relief anchors and grip or equivalent means shall be provided to prevent the electrical cord from pulling on the receptacle.

(F) Emergency communications.

A means of two-way communication shall be provided for each roof car suspended platform for use in an emergency.

(G) Safety belts or harness and lifelines.

A safety belt or harness with means for attachment to a lifeline on the roof or to the working platform shall be provided for each employee on a working platform suspended by less than four wire ropes.

Effective: 1/1/83

Prior Effective Date: 4/1/64

4123:1-17-05 Boatswain's chairs. (amended)

Boatswain's chairs shall be used for window cleaning operations only where the windows cannot be cleaned by other prescribed methods set forth in rules 4123:1-17-02 to 4123:1-17-04 and 4123:1-17-06 and 4123:1-17-07 of the Administrative Code.

(A) When constructed of wood the chair seat shall be no less than twelve inches by twenty-four inches by one-inch thickness, reinforced by cleats on the underside to prevent splitting. A chair of the same size may be constructed of material of equal strength.

(B) Seat slings shall be of no less than five-eighths-inch diameter, first grade manila rope, or its equivalent, which shall be reeved through the four seat holes so as to cross each other on the underside of the seat.

(C) The employee shall be protected by a safety belt or harness and lifeline in accordance with rule 4123:1-17-06 of the Administrative Code. The attachment point of the lifeline to the structure shall be appropriately changed as the work progresses laterally.

(D) The tackle shall consist of correct size ball bearing or bushed blocks and properly spliced five-eighths-inch diameter, first grade manila rope, or equivalent.

(E) The roof irons or hooks shall be of proper size and design, securely installed and anchored. Tiebacks of three-quarter-inch manila rope, or its equivalent, shall serve as an additional means of anchorage, which shall be installed as nearly as possible at right angles to the face of the building and shall be secured to a structurally sound portion of the building. When no structurally sound portion of the building permits installation substantially at right angles to the face of the building, two tiebacks shall be used and secured at substantially equal and opposing acute angles to the right angle. Where outrigger beams, which shall consist of structural metal, or davits are used, they shall be securely fastened or anchored to the frame or floor system of the building or structure.

(F) Tie-ins or suction cups shall be provided and used for boatswain's chairs to prevent them from swaying during the window cleaning operation.

Effective: 12/1/04

Prior Effective Dates: 4/1/64, 1/1/83

4123:1-17-06 Safety belts, safety harnesses, lifelines and lanyards. (amended)

(A) When required, lifelines shall be securely fastened to the structure. Lifelines, safety belts, safety harnesses, and lanyards shall be used only for employee safeguarding and shall sustain a static load of no less than five thousand ~~four hundred~~ pounds. Any lifeline, safety belt, safety harness, or lanyard actually subjected to in-service loading, as distinguished from static load testing, shall be removed from service and shall not be used again for employee safeguarding.

(B) Where the lifeline may be subjected to cutting or abrasion, a minimum seven-eighths inch wire core manila rope, or equivalent, shall be provided. For all other lifeline applications, a minimum of three-fourths-inch manila rope, or equivalent, shall be provided.

(C) Safety belt or harness lanyards shall be a minimum of one-half-inch nylon, or equivalent, with a maximum length to provide for a fall of no more than six feet.

(D) All safety belt or harness and lanyard hardware shall be drop forged or pressed steel, cadmium plated. Surfaces shall be smooth and free from sharp edges.

(E) All safety belt or harness and lanyard hardware shall be capable of withstanding a tensile loading of four thousand pounds without cracking, breaking, or becoming permanently deformed.

Effective: 1/1/83

Prior Effective Dates: 4/1/64

4123:1-17-07 Miscellaneous requirements. (no change)

(A) Portable extension sills.

- (1) Portable extension sills shall be no less than ten inches wide nor less than thirty inches long and shall be substantially constructed. The portable extension sill shall be securely fastened in place during window cleaning operations.
- (2) Portable extension sills shall not be used when window sills extend six inches or more beyond the window frame.
- (3) Portable extension sills shall be used only when the window cleaner is provided with a safety belt or harness and lifeline in compliance with rule 4123:1-17-06 of the Administrative Code, and when anchors are available.

(B) Window jacks and other platform devices.

Window jacks and all other platform devices fastened to window sills shall be used only when the window cleaner is provided with a safety belt or harness and lifeline in compliance with rule 4123:1-17-06 of the Administrative Code, and when anchors are available.

(C) Back supports for extra width windows.

Where the distance between anchors is more than six feet, a wire rope or corrosive resistant chain shall be provided on such windows to be used as a back support for the window cleaner.

(D) Stepping from window to window.

Window cleaners shall not be required to step from window to window on the outside of the building.

(E) Anchors.

When a safety belt or harness is required in window cleaning, no window cleaner shall be required to work on a window if any anchor is found to be loose, insecure or missing.

(F) Extension tools.

Each extension tool shall be equipped with a locking device which shall prevent accidental detachment of the window cleaning tool. The overall length of a tool with extensions shall not exceed six feet when used from any working position above the ground or alternatively above an unobstructed set back level having an outer balustrade or wall extending no less than forty-two inches above the set back level.

Effective: 12/1/04

Prior Effective Dates: 4/1/64, 1/1/83

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Chapter 4123-17 General Rating for the State Insurance Fund (1 rule)

Chapter 4123-18 Rehabilitation of Injured and Disabled Workers (16 rules)

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: R.C. 4123.29 and 4123.34 (Chapter 4123-17);
R.C. 4121.61 and 4121.441(A) (Chapter 4123-18).

2. The rule achieves an Ohio specific public policy goal.

What goal(s): The rules provide criteria and guidance for the provision of vocational rehabilitation services to injured workers in the Ohio workers' compensation system.

3. Existing federal regulation alone does not adequately regulate the subject matter.

4. The rule is effective, consistent and efficient.

5. The rule is not duplicative of rules already in existence.

6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. The rule has been reviewed for unintended negative consequences.

8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: The proposed rule changes were discussed at three meetings of BWC's Labor-Management-Government Advisory Council (LMG), which is responsible for providing advice and recommendations to BWC on rehabilitation matters (see R.C. 4121.70 and OAC 4123-18-18). The LMG's feedback and discussion yielded positive changes to the rules.

BWC also discussed the proposed rule changes with and obtained feedback on the rules from the following stakeholder groups: the International Association of Rehabilitation Professionals (IARP) and the Ohio Physical Therapy Association (OPTA) (one meeting with each group), the Ohio Association of Rehabilitation Facilities (OARF) (two meetings), and the Ohio Association for Justice (OAJ) (conference call). The stakeholders' questions, concerns and feedback resulted in productive revisions to the proposed rules.

9. The rule was reviewed for clarity and for easy comprehension.
10. The rule promotes transparency and predictability of regulatory activity.
11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.
12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

BWC Board of Directors
Executive Summary
Vocational Rehabilitation Rules
Chapter 4123-18

Introduction

Chapter 4123-18 of the Ohio Administrative Code contains BWC rules providing for the vocational rehabilitation of injured workers in the Ohio workers' compensation system. The rules were first published as Industrial Commission (IC) rules in the early 1980's, and were converted to BWC rules in the early 1990's when H.B. 222 transferred authority over vocational rehabilitation services from the IC to BWC.

BWC reviewed and extensively revised the vocational rehabilitation rules following the implementation of the Health Partnership Program (HPP). These rule revisions were effective January 1, 2001. OAC rules 4123-18-03, 4123-18-12, and 4123-18-13 were subsequently amended effective April 26, 2004, pursuant to the last Chapter 4123-18 five-year rule review.

As part of the current Chapter 4123-18 five-year rule review process, this chapter has again been thoroughly reviewed and numerous changes have been proposed. There are sixteen rules in Chapter 4123-18; thirteen rules will be revised and three rules will be rescinded. One related rule in Chapter 4123-17, pertaining to the now-defunct BWC transitional work grant program, will also be rescinded.

Background Law

Ohio Revised Code 4121.61 provides that the Administrator, with the advice and consent of the BWC Board of Directors, shall "adopt rules, take measures, and make expenditures as it deems necessary to aid claimants who have sustained compensable injuries or incurred compensable occupational diseases . . . to return to work or to assist in lessening or removing any resulting handicap."

Ohio Revised Code 4121.441(A) provides that the Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP "to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to an employee for an injury or occupational disease"

Pursuant to these statutes, BWC has adopted Ohio Administrative Code Chapter 4123-18, "Rehabilitation of Injured and Disabled Workers." The rules in this chapter are scheduled for five-year rule review as mandated by Ohio Revised Code 119.032. BWC owns and maintains the revision and update process for this section of the OAC.

Proposed Changes

The major substantive changes proposed for the vocational rehabilitation rules pursuant to the five-year rule review:

- Emphasize the need for MCOs and BWC to collaborate on management of the vocational rehabilitation and compensation responsibilities of a claim. (throughout Chapter 4123-18)
- Clarify the process and conditions under which an injured worker is referred for and determined to be both eligible and feasible to receive vocational rehabilitation services. OAC 4123-18-03(C) and (H)

- Add a provision to the vocational rehabilitation eligibility criteria under which an injured worker who was working and receiving living maintenance wage loss, but has lost his or her job through no fault of his or her own, shall be eligible to receive vocational rehabilitation services. OAC 4123-18-03(C)(3)(g)
- Simplify the process and clarify the criteria for injured workers who are currently working, but are experiencing difficulty maintaining employment due to the allowed conditions in their claim, to receive job retention services. OAC 4123-18-03(E)(2)
- Provide a definition of feasibility for vocational rehabilitation services and a non-exclusive list of factors to be considered in determining feasibility. OAC 4123-18-03(H)
- Clarify how appeals of vocational rehabilitation eligibility and feasibility determinations are processed. OAC 4123-18-03(I)
- Identify the beginning and ending dates for living maintenance payments relative to an injured worker's participation in vocational rehabilitation services. OAC 4123-18-04(A)
- Clarify the definition of a vocational rehabilitation plan medical hold. OAC 4123-18-04(B)(2)
- Clarify how appeals of living maintenance compensation determinations are processed. OAC 4123-18-04(F)
- Move the criteria for vocational rehabilitation case closure from OAC 4123-18-04 to OAC 4123-18-05 and include three additional reasons for closure: completion of the rehabilitation plan, disagreement between the injured worker and the MCO (and BWC) about specific plan services, and settlement of the claim. OAC 4123-18-05(E)
- Clarify how appeals of vocational rehabilitation plan closure determinations are processed. OAC 4123-18-05(F)
- Increase the maximum amount paid in a vocational rehabilitation plan for treatment of a non-allowed condition that is aggravating the industrial injury or occupational disease, preventing healing, impeding vocational rehabilitation, or is a barrier to return to work from \$1,500.00 to \$2,000.00. OAC 4123-18-08(B)(1)
- Clarify BWC's responsibility for authorization of pre-paid travel for injured workers in vocational rehabilitation plans. OAC 4123-18-08(C)(1)
- Relocate the requirement to prepare an annual report of vocational rehabilitation activities during the previous calendar year from OAC 4123-18-15 to OAC 4123-18-01 and rescind OAC 4123-18-15. OAC 4123-18-01(C)(4)
- Reinforce the obligation of self-insuring employers to provide a copy of an injured worker's vocational rehabilitation plan to the injured worker and their representative. OAC 4123-18-16(B)
- Clarify the application process and the criteria for injured workers to qualify for living maintenance wage loss benefits. OAC 4123-18-21
- Add the requirement that injured workers who are underemployed may be required to perform a good faith job search to remain eligible for living maintenance wage loss benefits. OAC 4123-18-21(A)(3)

- Define successful return to work as it applies to eligibility for living maintenance wage loss. OAC 4123-18-21(E)
- Remove references to the BWC rehabilitation division and the BWC rehabilitation center, as they no longer exist. OAC 4123-18-11, OAC 4123-18-12, OAC 4123-18-16
- Rescind rules governing fees for the BWC rehabilitation center and the transitional work grant program, as they no longer exist. OAC 4123-17-55, OAC 4123-18-06, OAC 4123-18-22

Stakeholder Involvement

The proposed rule changes were discussed at three meetings of BWC's Labor-Management-Government Advisory Council (LMG), which is responsible for providing advice and recommendations to BWC on rehabilitation matters (see R.C. 4121.70 and OAC 4123-18-18). The LMG's feedback and discussion yielded positive changes to the rules.

BWC also discussed the proposed rule changes with and obtained feedback on the rules from the following stakeholder groups: the International Association of Rehabilitation Professionals (IARP) and the Ohio Physical Therapy Association (OPTA) (one meeting with each group), the Ohio Association of Rehabilitation Facilities (OARF) (two meetings), and the Ohio Association for Justice (OAJ) (conference call). The stakeholders' questions, concerns and feedback resulted in productive revisions to the proposed rules.

OAC Chapter 4123-17 General Rating for the State Insurance Fund

4123-17-55 Transitional work program development grants. (Rescind)

Comment [a1]: The rule is no longer necessary, as the transitional work grant program no longer exists. However, transitional work services can still be offered to injured workers and employers through remain at work (RAW) and vocational rehabilitation plans.

(A) Grant monies for development of a transitional work program.

Pursuant to section 4123.29 of the Revised Code and rule 4123-18-06 of the Administrative Code, the administrator may grant monies to employers who wish to implement a transitional work program as set forth in this rule and rule 4123-18-06 of the Administrative Code. An employer is eligible for a transitional work program development grant only one time per policy number, except that an employer with more than 500 employees is eligible for up to three grants per policy number. The administrator may waive the requirement that the employer have 500 employees for the employer to be eligible for more than one grant per policy number. Only private state fund employers and public employer taxing district employers are eligible for these grants. Grant amounts will be based on the complexity of services needed as indicated in a proposal for transitional work services. Factors which may determine appropriate grant amounts may include the employer's number of:

- (1) Employees;
- (2) Job classifications;
- (3) Job analyses needed; and
- (4) Collective bargaining units.

(B) The bureau shall evaluate the employer's eligibility to receive a transitional work program development grant as outlined in this rule.

- (1) Employers may request a proposal from the list of transitional work developers from the bureau and then solicit proposals from these developers.
- (2) The bureau shall not reimburse the employer or the transitional work developers for costs associated with preparing and submitting a proposal to an employer.
- (3) The employer shall select one proposal to submit to the bureau for determining transitional work program development grant eligibility. The bureau shall not reimburse the employer for costs not deemed eligible.
- (4) The bureau shall provide the employer with grant monies for eighty per cent of the costs associated with developing the transitional work program by only bureau-certified transitional work developers. The employer shall directly reimburse the transitional work developers for the developers' services.

(C) The bureau may monitor the employer's and the transitional work developer's content and implementation of transitional work services.

Promulgated Under: 111.15
Statutory Authority: 4121.121, 4121.12
Rule Amplifies: 4123.29, 4123.34
Prior Effective Dates: 1/1/01; 4/22/02

OAC Chapter 4123-18 Rehabilitation of Injured and Disabled Workers

4123-18-01 ~~Vocational Provision of vocational rehabilitation services in the bureau of workers' compensation and the health partnership program.~~ (Amend)

(A) Pursuant to sections 4121.441 and 4121.61 of the Revised Code, the bureau shall adopt rules ~~and administer the health partnership program (HPP) for the provision of vocational rehabilitation services to injured workers.~~ Managed care organizations (MCOs) shall provide medical management, including the management of vocational rehabilitation to injured workers, and the bureau shall manage all other aspects of the claim.

Comment [a2]: More clearly describes the purpose of this rule chapter.

(B) The rules of this chapter shall be applicable to all rehabilitation ~~of~~ injured workers and employers, whether the rehabilitation services are ~~furnished administered by the bureau or a private rehabilitation provider, or are administered and managed by an MCO, or administered by a self-insuring employer participating in the rehabilitation surplus fund. A self-insuring employer~~ Self-insuring employers not participating in the rehabilitation surplus fund ~~is required to shall also~~ adhere to these rules to ensure that rehabilitation services provided to their injured workers are equal to or greater than the services defined in this chapter.

Comment [a3]: Describes the functions of BWC and the MCOs in the vocational rehabilitation process more accurately so questions can be directed to the correct source.

Comment [a4]: Reinforces the applicability of these rules to self-insuring employers who have opted out of the rehabilitation surplus fund.

(C) The bureau shall:

- (1) Develop policy to implement vocational rehabilitation services.
- (2) Assure that injured workers receive appropriate remain at work and/or return to work vocational rehabilitation services.
- (3) Audit the ~~MCO~~ MCOs' vocational rehabilitation management practices and provision of services.
- (4) Prepare an annual report of vocational rehabilitation activities during the prior calendar year.

Comment [a5]: This requirement is being relocated from OAC 4123-18-15 and that rule is being rescinded.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61 to 4121.69
Prior Effective Dates: 7/10/80; 2/3/92; 1/1/01

4123-18-02 Goals of vocational rehabilitation. (Amend)

(A) The bureau shall take measures and make expenditures as it deems necessary to aid injured workers who have sustained compensable injuries or contracted compensable occupational diseases to remain at work or to return to work.

(B) The objectives of the surplus-funded vocational rehabilitation plan are to be addressed and considered in the following order:

- (1) To return the injured worker to the former employer in the original job, or, if this is not possible;
- (2) To encourage the employer to modify the original job or to provide employment in a different job, or, if this is not possible;
- (3) To assist the injured worker in finding employment in a related industry, and if not possible then in any industry.

The hierarchy of return to work objectives, as outlined above may require appropriate skill enhancement, and/or remedial or short term training to aid injured workers in successfully returning to work at any of the steps.

(C) ~~Injured~~ The bureau shall ensure that injured workers who wish to become self-employed shall be are informed by the MCO of the opportunities available through the state rehabilitation services commission, the federal small business administration office, the local Ohio small business development center, the Ohio department of development, or other resources.

(D) The bureau will not make expenditures from the surplus fund established by section 4123.34 of the Revised Code for services solely directed toward the medical management of an industrial claim.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.62
Prior Effective Dates: 7/10/80; 12/7/82; 1/1/01

Comment [a6]: Hyphen removed as unnecessary.

Comment [a7]: It is ultimately BWC's responsibility to ensure the injured worker is informed of the opportunities available, by the MCO or otherwise.

Comment [a8]: Makes this rule consistent with OAC rules 4123-18-03 (A) (1) and 4123-18-08(A)(2) .

4123-18-03 Guidelines for referral to and acceptance into vocational rehabilitation. (Amend)

(A) Scope of vocational rehabilitation.

(1) Vocational rehabilitation is the process of restoring the vocational functioning of a worker who experiences an industrial injury or occupational disease and who voluntarily agrees to participate in vocational rehabilitation. ~~As the injured worker progresses toward medical stability, the worker should be assessed for vocational rehabilitation. Vocational rehabilitation services are focused on return to work and are not reimbursable from the surplus fund when they are if solely directed toward the medical management of a claim.~~

Comment [a9]: Emphasizes the voluntary nature of vocational rehabilitation for the injured worker, which is implied in the vocational rehabilitation statutes (see R.C. 4121.63) but has not been expressly stated in the rules.

(2) The vocational rehabilitation rules of Chapter 4123-18 of the Administrative Code shall aid in the development of procedures for providing reimbursable vocational rehabilitation services.

Comment [a10]: Corrects the erroneous impression that an injured worker should have reached maximum medical improvement (MMI) before being referred for vocational rehabilitation services.

(B) Referrals for vocational rehabilitation services.

(1) Anyone can refer an injured worker for vocational rehabilitation services.

(2) ~~The bureau shall determine the eligibility of an injured worker referred for vocational rehabilitation services.~~

Comment [a11]: Clarifies that the objective of vocational rehabilitation is return to work.

(3) Once eligibility has been determined, the MCO shall contact the ~~potential candidate injured worker~~ referred for vocational rehabilitation services within three working days.

Comment [a12]: Clarifies that BWC is responsible for decisions regarding eligibility, as these decisions affect an injured worker's right to living maintenance compensation.

(4) ~~After the MCO contacts the injured worker, the MCO, with bureau oversight, shall determine the feasibility of the injured worker referred for vocational rehabilitation services.~~

Comment [a13]: Clarifies that the MCO, with BWC oversight, is responsible for decisions regarding feasibility.

(5) ~~An injured worker shall not be able to participate in a vocational rehabilitation plan or receive vocational rehabilitation services until the injured worker has been determined to be both eligible and feasible for vocational rehabilitation services.~~

Comment [a14]: Clarifies that referrals for vocational rehabilitation services in inactive claims will be processed in accordance with BWC's claim reactivation rule.

(6) ~~Referrals for vocational rehabilitation in inactive claims shall be processed in accordance with rule 4123-3-15 of the Administrative Code.~~

Comment [a15]: Clarifies that an injured worker must be found both eligible and feasible for vocational rehabilitation before they may receive such services, eliminating confusion regarding the need for both determinations.

(C) Eligibility for vocational rehabilitation services.

To be eligible for rehabilitation services the injured worker must meet the following criteria:

(1) ~~Recognized~~ Referred claim that is either:

Comment [a16]: Heading added for clarification.

(a) A ~~lost time~~ claim allowed by an order of the bureau of workers' compensation or ~~an order of the industrial commission or of its hearing officers~~ with eight or more days of lost time due to a work related injury; or

Comment [a17]: Clarifies the definition of an eligible lost time claim for purposes of the rule to lessen confusion.

(b) A claim certified by a state university or state agency; or

(c) A claim certified by a self-insuring employer.

(2) The ~~recognized allowance~~ injured worker must reflect have a significant impediment to the ~~injured worker's~~ employment or the maintenance of employment as a direct result of the allowed conditions in the referred claim.

Comment [a18]: Clarifies and reinforces the importance of the link between the significant impediment and the allowed conditions in the claim in determining eligibility for vocational rehabilitation services.

(3) The injured worker must have at least one of the following present in the referred claim:

(a) ~~Received~~ The injured worker is receiving or has been awarded temporary total, non-working wage loss, or permanent total compensation ~~on for a period of time that must include the date of referral. For purposes of this section, payments made in lieu of temporary total compensation (e.g., salary continuation) shall be treated the same as temporary total compensation; or~~

Comment [a19]: Clarifies that the injured worker must be receiving or must have been awarded these benefits for a period of time that includes the date of referral to be eligible for vocational rehabilitation services.

(b) Granted a scheduled loss award under division (B) of section 4123.57 of the Revised Code; or

Comment [a20]: Stresses that this provision applies to scheduled loss awards to eliminate confusion with percentage permanent partial awards.

(c) ~~Currently receiving payments in lieu of compensation (e.g., salary continuation);~~

Comment [a21]: This provision has been added to paragraph (C)(3)(a) of the rule (see above).

(d) Received or awarded a percentage permanent partial award under division (A) of section 4123.57 of the Revised Code and has documented job restrictions as a result of that award documented by the physician of record and dated not more than one hundred eighty days prior to the date of referral; or

Comment [a22]: Stresses that this provision applies to percentage permanent partial awards to eliminate confusion with scheduled loss awards.

(e) ~~Reached (d) Determined to have reached~~ maximum medical improvement ~~from in the lost time claim (with eight or more days of lost time due to a work related injury) by an order of the bureau or the industrial commission, or the injured worker's physician of record has documented in writing that the injured worker has reached maximum medical improvement in the claim, but and the injured worker is not currently receiving compensation and continues to have~~ job restrictions in that the claim as documented by the physician of record and dated not more than one hundred eighty days prior to the date of referral; or

Comment [a23]: Requires that the job restrictions must be documented by the injured worker's physician of record, who directs the vocational rehabilitation plan.

Comment [a24]: Insures that the injured worker's restrictions are current.

(f) ~~(e) Is receiving job retention services to maintain employment or satisfies the criteria set forth in paragraph (C)-(2) (E) of this rule on the date of referral; or~~

Comment [a25]: Clarifies the definition of an eligible lost time claim for purposes of the rule to lessen confusion.

Comment [a26]: Clarifies what is accepted as evidence of MMI in determining eligibility for vocational rehabilitation services.

(g) ~~(f) Sustained a catastrophic injury claim and a vocational goal can be established; or~~

Comment [a27]: Insures that the injured worker's restrictions are current.

(h) ~~(g) Was receiving living maintenance wage loss not more than ninety days prior to the date of referral, has continuing job restrictions documented by the physician of record as a result of the allowed conditions in the claim, and has lost his or her job through no fault of his or her own.~~

Comment [a28]: If an injured worker is active in a job retention plan that is not successful, they can be transferred to a surplus funded vocational rehabilitation plan directed toward a different job with a different employer.

(4) ~~The injured worker must not be working on the date of referral, with the exception of referral for job retention services.~~

Comment [a29]: This eliminates the need for the injured worker to apply for non-working wage loss compensation in order to be eligible for vocational rehabilitation services and living maintenance compensation.

(D) Eligibility for rehabilitation services for an employee of a state agency or state university employer.

Comment [a30]: Clarifies that while the primary purpose of vocational rehabilitation is to assist injured workers in returning to work, it is also available to injured workers who are currently working but are having difficulty maintaining employment due to the allowed conditions in their claim.

(1) Notwithstanding that an employee of a state agency or state university may not meet the eligibility criteria of paragraph (C)(3) of this rule, the employee shall be eligible for rehabilitation services where the employee meets the eligibility criteria of paragraph (C)(1)(b) of this rule and the employee and employer agree upon a plan of rehabilitation services.

(2) ~~An employee of a state agency or state university shall meet the eligibility criteria of paragraph (C)(1)(b) of this rule if the employer has accepted or certified the employee's claim.~~

Comment [a31]: This paragraph is redundant and unnecessary.

(E) Job retention services.

(1) Job retention may be furnished when an injured worker is working and experiences a significant work-related problem as a direct result of the allowed conditions in the claim.

Comment [a32]: Hyphen removed as unnecessary.

(2) Job retention services may be provided if:

(a) The injured worker has received temporary total compensation or salary continuation from an allowed lost time claim with eight or more days of lost time due to a work related injury; and

Comment [a33]: Defines the compensation types that make an injured worker eligible for job retention services and clarifies the definition of an eligible lost time claim for purposes of the rule to lessen confusion.

(b) The current work related problem is a direct result of the allowed conditions in the claim; and

Comment [a34]: This paragraph is redundant and unnecessary.

(c) The physician of record and the employer provide provides a written statement in office notes or correspondence indicating that the injured worker has work limitations related to the allowed conditions in the claim that negatively impact describing the specific job task problems the injured worker is experiencing and a statement describing why these services are needed worker's ability to maintain the injured worker's employment; and

Comment [a35]: This change describes the separate documentation required from the injured worker's physician of record and employer to support job retention services.

(c) The injured worker's employer describes the specific job task problems the injured worker is experiencing to the MCO and the MCO documents these problems in the claim. The MCO shall include a statement describing why the injured worker needs job retention services to maintain employment.

Comment [a36]: The employer would have knowledge of the specific job task problems causing difficulty for the injured worker.

(F) Non-eligibility for vocational rehabilitation services.

Comment [a37]: Heading added for clarification.

The injured worker is not eligible for vocational rehabilitation services and such services shall be terminated:

(1) After the effective date of a lump sum settlement; or

(2) If the claim is subsequently disallowed on appeal by an order of the industrial commission, its district or staff hearing officers, or by an order of the court.

Comment [a38]: Redundant wording.

(G) Diagnostic evaluations.

Comment [a39]: Heading added for clarification.

Prior to rehabilitation plan implementation by the MCO, diagnostic evaluations may be used in determining feasibility for vocational rehabilitation services. Payment for such examination(s) and the vocational rehabilitation case management occurring during this period may be charged to the surplus fund.

Comment [a40]: The MCO does not implement the vocational rehabilitation plan.

(H) Determination of feasibility for vocational rehabilitation services.

Comment [a41]: Defines and provides criteria for determining an injured worker's feasibility for vocational rehabilitation services, which has not previously been stated in the rules.

(1) Feasibility for vocational rehabilitation services means there is a reasonable probability that the injured worker will benefit from services at this time and return to work as a result of the services. Feasibility is initially determined at the time of referral and is assessed throughout the rehabilitation process.

Deleted: continually

Deleted: (2) Determination of an injured worker's feasibility for vocational rehabilitation services shall include, but not be limited to, review of the following information and factors:¶

(a) An injured worker is feasible for vocational rehabilitation services when a review of all available information demonstrates that it is likely the provision of such services will result in the injured worker returning to work.

Deleted: All available information from the injured worker's physician of record related to the injured worker's ability to participate in vocational rehabilitation services (including, but not limited to conversations with the injured worker, completed MEDCO-14s or equivalent, etc.);

(b) An injured worker is not feasible for vocational rehabilitation services when a review of all available information demonstrates that, in spite of the provision of such services, it is likely the injured worker will not return to work.

Deleted: The injured worker's interest in returning to work;

(c) "All available information" means records, documents, written and oral statements, and any and all medical, psychological, vocational, social, and historical data, of any kind whatsoever, developed in the claim through which vocational rehabilitation is sought or otherwise, that is relevant to the determination of an injured worker's feasibility for vocational rehabilitation services.

Deleted: The injured worker's past participation in vocational rehabilitation plans or other bureau provided services;

(2) A determination of feasibility shall be written and shall enumerate all available information utilized in making the determination.

Deleted: ¶
(d) Documentation of events that could impact the injured worker's ability to participate in vocational rehabilitation services at this time (including, but not limited to hospitalization, scheduled surgery, vacation, incarceration, etc.); ¶

(I) Appeal process for vocational rehabilitation eligibility and feasibility determinations.

(1) Facts supporting a decision concerning either the acceptance or denial of an injured worker into vocational rehabilitation due to ~~either eligibility or feasibility~~ shall be documented in the MCO's bureau's decision. ~~Written objections Appeals of eligibility determinations shall be governed by the alternative dispute resolution process provided for in rule 4123-6-16 of the Administrative Code filed with the bureau within fourteen days of receipt of the bureau's determination.~~

¶
(e) Documentation of medical and psychological issues, including pain issues, medication or substance abuse issues, both related and unrelated to the allowed conditions in the referred claim. ¶

(2) Facts supporting a decision concerning either the acceptance or denial of an injured worker into vocational rehabilitation due to feasibility shall be documented in the MCO's decision. Appeals of feasibility determinations shall be governed by the alternative dispute resolution process provided for in rule 4123-6-16 of the Administrative Code.

Comment [a42]: Clarifies the separate appeal processes for vocational rehabilitation eligibility and feasibility determinations.

Comment [a43]: A 14 day appeal period for BWC eligibility determinations is consistent with appeal timeframes for other BWC orders under R.C. 4123.511.

(J) Injured worker's right to compensation or benefits.

Denial of rehabilitation services will not affect an injured worker's right to compensation or benefits under Chapters 4123., 4127., and 4131. of the Revised Code for which the injured worker otherwise qualifies.

Comment [a44]: Heading added for clarification

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.121, 4121.61
Rule Amplifies: 4121.62, 4121.63
Prior Effective Dates: 3/16/92; 1/15/99; 8/20/00; 1/1/01; 4/26/04

4123-18-04 Living maintenance allowance. (Amend)

The bureau shall order living maintenance to be paid from the surplus fund, established by section 4123.34 of the Revised Code, to each injured worker in accordance with the guidelines listed below. Living maintenance payments are compensation under Chapters 4121. and 4123. of the Revised Code.

An injured worker is eligible for living maintenance payments in accordance with the guidelines of this rule.

(A) Living maintenance payments shall begin at the time on the date that the injured worker actually begins to participate in a an approved vocational rehabilitation plan as defined in rule 4123-18-05 of the Administrative Code, not the date of referral for vocational rehabilitation services nor the date the injured worker signed the rehabilitation agreement. Activities performed prior to the injured worker's active participation in the approved vocational rehabilitation plan are considered pre-plan activities for which living maintenance is not paid. This date may or may not coincide with the MCO's submission of a written vocational rehabilitation plan and the agreement of the injured worker to participate in a vocational rehabilitation plan.

Comment [a45]: Clarifies the beginning date of living maintenance compensation. Per R.C. 4121.63, approval of a vocational rehabilitation plan is based on the outcome of pre-plan activities. Living maintenance cannot be granted until pre-plan activities are completed and an approved plan is implemented.

If salary continuation is offered by the employer of record, an injured worker maintains the right to choose to receive either salary continuation or living maintenance during vocational rehabilitation. However, if temporary total or living maintenance has been paid in the claim, the injured worker shall be paid living maintenance when participating in an approved vocational rehabilitation plan. Whenever salary continuation is paid by the employer, it must be paid at the injured worker's regular (full) salary level.

Comment [a46]: Clarifies that living maintenance is only paid while the injured worker is actively participating in an approved vocational rehabilitation plan.

(B) The bureau shall order suspension of living maintenance payments at such time as it becomes evident that the injured worker will not be able to participate actively in his/her their vocational rehabilitation plan for a period of thirty days or more due to the medical instability of the injured worker. The suspension of living maintenance shall not affect an injured worker's right to compensation or benefits under the Revised Code for which the injured worker otherwise qualifies.

(1) The bureau shall, assist the injured worker in obtaining the payment of other workers' compensation benefits to which the injured worker would normally be entitled absent involvement in a vocational rehabilitation plan upon the cessation of living maintenance payments.

(2) Medical hold and eligibility.

Comment [a47]: Clarifies the definition of and the process for determining an injured worker's eligibility for a medical hold.

Upon request from the MCO, the bureau will shall determine whether, based on adequate medical documentation, the injured worker is eligible for worker's vocational rehabilitation plan should be closed with a medical hold. Adequate medical documentation must be provided to support the medical hold. This period may not exceed two years from the date of medical hold determination. The bureau shall thereafter monitor the injured worker's medical status with the attending physician.

(a) A medical hold will retain the injured worker's eligibility for vocational rehabilitation services for up to a maximum of two years from the date of vocational rehabilitation plan file closure. The bureau and the MCO shall thereafter monitor the injured worker's medical status with the attending physician.

~~(3)~~ (b) When the bureau becomes aware of the restabilization of the injured worker's medical condition, the injured ~~worker~~ worker's vocational rehabilitation plan shall be reactivated ~~into the division and,~~ absent any extenuating

circumstances, and appropriate rehabilitation services should shall begin as soon as possible.

(C) The bureau shall order termination of living maintenance payments ~~at such time as~~ upon the earlier of:

~~(1) The injured worker has returned~~ worker's return to work other than as part of a gradual return to work plan; or

~~(2) The Closure of the injured worker has failed to fulfill the responsibilities outlined in the worker's vocational rehabilitation plan pursuant to paragraph (E) of rule 4123-18-05 of the Administrative Code; or~~

~~(3) The injured worker is unable to attain the goals of his/her vocational rehabilitation; or~~

~~(4) The injured worker has refused, without good cause, to accept an offer of employment within the vocational goal of the rehabilitation plan; or~~

~~(5) The injured worker is no longer living.~~

The termination of living maintenance shall not affect an injured worker's right to compensation or benefits under the Revised Code for which the injured worker otherwise qualifies.

(D) The bureau may order deduction from any living maintenance payment an amount equal to:

(1) One-seventh of the weekly payment to which an injured worker is entitled for each full day during which ~~the~~ injured worker fails, without good cause, to participate in ~~his/her~~ their approved vocational rehabilitation plan.

(2) Any wages or other remuneration received by the injured worker while participating in a an approved vocational rehabilitation plan and receiving living maintenance must either be endorsed over to the bureau, or will be deducted from the injured worker's living maintenance payments or from future awards of compensation.

(E) Living maintenance payments shall not be ordered by the bureau for a period or periods exceeding six months in the aggregate, unless ~~review by the bureau reveals~~ determines that the injured worker will ~~be benefited by~~ benefit from an extension of vocational rehabilitation services.

(F) Appeals regarding determination of an injured worker's eligibility for living maintenance payments shall be filed with the bureau within fourteen days of receipt of the bureau's determination.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.62, 4121.63, 4121.66
Prior Effective Dates: 7/10/80; 12/7/82; 12/3/92; 1/1/01

Comment [a48]: This paragraph has been rewritten to clarify when living maintenance compensation is terminated. The deleted material has been incorporated into OAC 4123-18-05(E) as reasons for rehabilitation plan closure.

Comment [a49]: Clarifies how appeals of BWC living maintenance determinations are processed. A 14 day appeal period for BWC living maintenance determinations is consistent with appeal timeframes for other BWC orders under R.C. 4123.511.

4123-18-05 Individualized written vocational rehabilitation plan. (Amend)

(A) When surplus funds are used, the MCO shall oversee that a vocational rehabilitation case management provider contacts the injured worker and prepares an individualized written vocational rehabilitation plan for the injured worker's acknowledgement and approval. The vocational rehabilitation case management provider shall, where practical, consult with the injured worker's employer, the physician of record, and others considered appropriate.

(B) Each written vocational rehabilitation plan shall include, at a minimum, the following information:

- (1) Identification of the injured worker's return to work goals and barriers to employment;
- (2) The types of services required;
- (3) The estimated costs;
- (4) The estimated length of time required to attain the goals of the plan;
- (5) An explanation of the specific strategies that will be employed to assist the injured worker in returning to work. The MCO must document that the return to work goal is addressed in the following order:

- (a) ~~His/her~~ The injured worker's original job; or
- (b) Another job with the same employer; or
- (c) A job in a related industry or business; or
- (d) A job in another industry or business;
- (e) The hierarchy of return to work objectives, as outlined above may require appropriate skill enhancement, and/or remedial or short term training to aid injured workers in successfully returning to work at any of the steps.;

(6) The method of evaluating services.

(C) The MCO shall administer the development of the vocational rehabilitation plan, monitor the injured worker's progress and where circumstances warrant, direct the amendment or modification of the plan.

(D) The bureau shall determine if living maintenance payments are appropriate and shall monitor all other surplus fund expenditures.

(E) The MCO, in conjunction with the bureau, shall close an injured worker's vocational rehabilitation plan for the following objectively determined or identified reasons:

- (1) The injured worker has completed a vocational rehabilitation plan;
- (2) The injured worker has failed to fulfill the responsibilities outlined in the vocational rehabilitation plan;
- (3) The injured worker is unable to attain the goals of the vocational rehabilitation plan;
- (4) The injured worker has refused, without good cause, to accept an offer of employment within the vocational goal of the rehabilitation plan;

Comment [a50]: Clarifies that closure of a vocational rehabilitation plan is a joint decision by the MCO and BWC.

(5) The injured worker is no longer living;

(6) The injured worker does not agree with the MCO's or bureau's decision to approve or deny specific vocational rehabilitation plan services; or

(7) The claim is subsequently disallowed by an order of the industrial commission, its district or staff hearing officers, or by an order of the court.

(8)The claim is settled (medical and/or indemnity).

(F) Appeals regarding vocational rehabilitation plan closure shall be governed by the alternative dispute resolution process provided for in rule 4123-6-16 of the Administrative Code.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.62, 4121.63
Prior Effective Dates: 7/10/80; 12/7/82; 12/3/92; 1/1/01

Comment [a51]: This paragraph relocates the reasons for vocational rehabilitation plan closure to this rule and adds completion of the plan, disagreement between the injured worker and the MCO (and BWC) about specific plan services, and settlement of the claim to the reasons for plan closure.

Comment [a52]: Clarifies how appeals of vocational rehabilitation plan closure are processed.

4123-18-06 Transitional work programs. (Rescind)

Comment [a53]: The rule is no longer necessary, as the transitional work grant program no longer exists. However, transitional work services can still be offered to injured workers and employers through remain at work (RAW) and vocational rehabilitation plans.

(A) As used in this rule the following definitions shall apply:

(1) "Transitional work" means a work-site program that provides an individualized interim step in the recovery of an injured worker with job restrictions resulting from the allowed conditions in the claim. Developed in conjunction with the employer and the injured worker, or with others as needed, including, but not limited to the collective bargaining agent (where applicable), the physician of record, rehabilitation professionals, and the MCO, a transitional work program assists the injured worker in progressively performing the duties of a targeted job.

(2) "Transitional work developer" means the provider who submits a proposal of transitional work services to the employer and then develops the transitional work program. This provider must be qualified in accordance with paragraph (C)(1) of this rule.

(3) "Transitional work on-site therapist" means the provider who provides the on-site transitional work therapy services.

(B) Grant monies for development of a transitional work program.

Pursuant to rule 4123-17-55 of the Administrative Code, the administrator may grant monies to employers who wish to implement a transitional work program as set forth in this rule.

(C) Bureau recognition of authority to provide transitional work services.

(1) A transitional work developer shall:

(a) Be either:

(i) A vocational/medical case manager as provided in paragraph (C)(32)(36) of rule 4123-6-02.2 of the Administrative Code;

(ii) An occupational therapist as provided in paragraph (C)(18)(21) of rule 4123-6-02.2 of the Administrative Code; or

(iii) A physical therapist as provided in paragraph (C)(23)(25) of rule 4123-6-02.2 of the Administrative Code;

(b) Complete bureau sponsored transitional work development training prior to delivering transitional work programs at two year intervals; and,

(c) Have verified experience in developing transitional work programs according to the bureau's transitional work policy; or, verified mentoring experience with a developer of transitional work services according to the bureau's transitional work policy.

(2) An on-site transitional work therapist shall be a bureau certified provider as provided in rule 4123-6-02.2 of the Administrative Code and shall be licensed and certified to provide transitional work therapy within the provider's scope of practice.

(D) The bureau may deny or revoke a transitional work developer's authority to provide services if there is reasonable evidence that the developer:

(1) Engaged in unethical or illegal activities in the provision of transitional work services;

(2) Failed to maintain appropriate qualifications for providing transitional work in accordance with this rule;

(3) Failed to provide transitional work services in accordance with this rule and bureau transitional work guidelines; or,

(4) Failed to maintain valid Ohio workers' compensation coverage.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61 to 4121.69
Prior Effective Dates: 1/1/01

4123-18-08 Payment for rehabilitation services and related expenses from the surplus fund. (Amend)

(A) General principles.

(1) Vocational rehabilitation services and living maintenance shall be paid from the surplus fund, established by section 4123.34 of the Revised Code, so long as such costs are incurred in a lost time claim pursuant to an approved vocational rehabilitation plan.

(2) Vocational rehabilitation services, as mentioned in paragraph (A)(1) of this rule, can include but must not be solely directed ~~at~~ toward medical management and allied medical treatment of the injured worker in an approved vocational rehabilitation plan.

(3) Notwithstanding paragraph (A)(1) of this rule, any period of treatment relating to the allowed condition(s) of the claim which has been prescribed and provided prior to the approval of the vocational rehabilitation plan by the attending physician in the claim, by a specialist to whom the injured worker has been referred by the attending physician, the injured worker's employer, the MCO, or the bureau of workers' compensation, and which extends into the calendar period of the injured worker's vocational rehabilitation plan shall continue to be charged to the risk of the employer.

(4) Vocational rehabilitation case management costs incurred in the development and preparation of an ~~MCO administered~~ approved vocational rehabilitation plan are vocational rehabilitation services and are paid from the surplus fund. On-going vocational rehabilitation case management professional services and travel are also paid from the surplus fund while the rehabilitation case is open.

Comment [a54]: The MCO manages the vocational rehabilitation of the injured worker, but does not administer the plan.

(5) Pre-acceptance or vocational rehabilitation plan development costs for medical, psychological, and vocational evaluations may be charged to the surplus fund.

(B) Non-allowed conditions.

(1) The MCO and bureau shall authorize payment for treatment of a condition which is unrelated to the injury or occupational disease as long as it is clearly evident that the unrelated condition is aggravating the industrial injury or occupational disease, preventing healing, impeding vocational rehabilitation, or is a barrier to returning to work. The payment for these conditions shall not exceed ~~one thousand five hundred dollars~~ for each claim.

Comment [a55]: The amount has been increased from \$1,500 to \$2,000 to reflect the new environment.

(2) The MCO shall fully document the rationale for these expenditures in both the vocational rehabilitation plan and the MCO's rehabilitation case file.

(3) Payment for such treatment shall not constitute a recognition of the unrelated condition as a part of the disability in the claim.

(4) As soon as the unrelated condition is no longer affecting the industrial injury or occupational disease, the responsibility for its treatment ceases and payment for any subsequent treatment that may be given will be injured worker's own responsibility.

(C) Expenses incurred by injured workers.

Travel expenses shall be paid in an ~~MCO authorized~~ approved vocational rehabilitation plan in accordance with rule 4123-6-40 of the Administrative Code, except as additionally provided under the following circumstances:

(1) The MCO and the bureau may authorize advancements for planned and preauthorized travel expenses, provided such an advancement does not cover more than fourteen calendar days.

Comment [a56]: Clarifies BWC's responsibility for authorizing pre-pay travel expenses in vocational rehabilitation plans.

(2) All bureau approved expenses under this rule shall be paid from the surplus fund established by section 4123.34 of the Revised Code.

Comment [a57]: Hyphen is removed as unnecessary.

(3) Relocation expenses may be paid from the surplus fund. The MCO shall determine the reasonable and necessary costs. These payments may be authorized up to two thousand dollars per injured worker. These costs may be approved when all of the following criteria are met:

(a) Job opportunities for which the injured worker is qualified do not exist within a reasonable commute on a daily basis.

(b) The injured worker has secured a job at the new location as determined by the MCO.

(c) When the criteria under paragraphs (C)(3)(a) and (C)(3)(b) of this rule are satisfied, the bureau may order the payment of relocation expenses with temporary lodging for up to sixty days to find a new residence if the injured worker must sell ~~his or her~~ their last place of residence. The relocation expenses may include temporary lodging for up to sixty days.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.62, 4123.53, 4123.66
Prior Effective Dates: 7/10/80; 12/7/82; 3/16/92; 1/1/01

4123-18-11 Incentive payments to employers who hire or retain claimants injured workers who have completed a rehabilitation plan. (Amend)

The rehabilitation division bureau, as a means of encouraging employers to retain, rehire, or hire claimants injured workers who have successfully completed a prescribed rehabilitation plan, may make payments to employers from the surplus fund established by section 4123.34 of the Revised Code.

(A) The payments shall be negotiated with the employer and based upon a written agreement signed by the employer, the claimant injured worker and the division bureau. The basis for negotiation shall be:

- (1) The nature of the disability of the claimant injured worker as determined by the division bureau;
- (2) The relationship of the disability to the job requirements; and
- (3) The individual merits of the case.

(B) The period(s) of such payment shall not exceed six months in the aggregate, unless a review by the division bureau determines that the claimant injured worker would be benefited by benefit from an extension of payments.

(C) Payments under this rule shall be made directly to the employer on a monthly basis, pursuant to an administrative order of the division bureau, ~~ordering such to be paid on a monthly basis~~, provided the employer is a complying employer in the states in which it is subject to workers' compensation coverage requirements or has been accepted by the administrator of workers' compensation as a self-insuring employer under section 4123.35 of the Revised Code. Payments may be made to out-of-state employers who are not subject to the workers' compensation laws of Ohio if a reasonable but unsuccessful effort has been made to secure employment for the claimant injured worker within Ohio. Such payments shall be in amounts stated in the written agreement and shall be charged to the surplus fund, established by section 4123.34 of the Revised Code.

(D) The bureau may make incentive payments from the surplus fund to an employer where the employer offers its employee paid transitional work activities at the employer's worksite and the employee has completed required medical rehabilitation services and has successfully satisfied vocational rehabilitation readiness requirements. An employee meets vocational rehabilitation readiness requirements when the employee has been officially referred for vocational rehabilitation, is medically stable, and has a significant impediment to a return to full employment.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.62, 4121.65, 4121.66, 4121.67, 4123.35
Prior Effective Dates: 2/3/92; 7/17/00

Comment [a58]: Changes "claimant" references to "injured worker," to be consistent with the other rules in the chapter.

Comment [a59]: The "rehabilitation division" is no longer a separate entity. This change reflects the current reality.

4123-18-12 ~~Rehabilitation division Bureau~~ authorized to employ and secure cooperation of others required to meet its goals. (Amend)

Comment [a60]: The "rehabilitation division" is no longer a separate entity. This change reflects the current reality.

(A) The bureau may sponsor, cooperate with, or employ the services and resources of any public entity or private person, business or association in fulfilling its responsibilities to provide vocational rehabilitation ~~for services to~~ eligible injured workers ~~as prescribed by the rules of the bureau of workers' compensation.~~

(B) The rehabilitation services commission, the department of job and family services, and any other public officer, employee or agency of the state shall, pursuant to this rule and section 4121.69 of the Revised Code, give to the bureau full cooperation and shall, at the request of the administrator of the bureau of workers' compensation, enter into a written agreement stating the procedures and criteria for referring, accepting, and providing services to injured workers in approved vocational rehabilitation plans.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.62, 4121.65, 4121.66, 4121.69
Prior Effective Dates: 7/10/80; 2/3/92; 4/26/04

**4123-18-13 Referral to rehabilitation services commission permitted.
(Amend)**

(A) In appropriate cases, the bureau may refer ~~a claimant~~ an injured worker to the rehabilitation services commission to participate in a plan offered by the rehabilitation services commission (the bureau of vocational rehabilitation and the bureau of services for the visually impaired).

Comment [a61]: Changes "claimant" reference to "injured worker," to be consistent with the other rules in the chapter.

(B) The administrator of the bureau of workers' compensation will order payment from the surplus fund established by section 4123.34 of the Revised Code to compensate the rehabilitation services commission for the nonfederal portion of its services.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.62, 4121.66, 4121.69
Prior Effective Dates: 7/10/80; 2/3/92; 4/26/04

4123-18-14 Injured workers suffering compensable injuries, occupational diseases or death while in a ~~prescribed~~ an approved vocational rehabilitation plan. (Amend)

(A) Claims for injury, occupational disease or death incurred in the course of and arising out of participation in a ~~MCO authorized~~ an approved vocational rehabilitation program plan may be filed for compensation and benefits as if the injured worker's employer were the bureau of ~~worker's~~ workers' compensation.

(B) The full or average weekly wage for the rehabilitation injury, occupational disease, or death claim shall be calculated using the full or average weekly wage information in the original claim pursuant to which the injured worker undertook participation in the prescribed rehabilitation plan; provided, that if the statewide average weekly wage in the year of the rehabilitation injury, occupational disease or death is different from that applicable to the original claim, the injured worker's full or average weekly wage shall be calculated using the original wage information but subject to the maximum compensation rate in such subsequent year.

(C) All compensation and benefit awards arising out of such a claim shall be charged to the surplus fund established by section 4123.34 of the Revised Code.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.68
Prior Effective Dates: 7/10/80; 2/3/92; 1/1/01

4123-18-15 Annual reports. (Rescind)

(A) Annually, the bureau shall prepare and submit to the administrator of workers' compensation a report of vocational rehabilitation activities during the prior calendar year.

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05

Rule Amplifies: 4121.61, 4121.62

Prior Effective Dates: 7/10/80; 2/3/92; 1/1/01

Comment [a62]: This requirement has been relocated to OAC 4123-18-01.

4123-18-16 Self-insuring employer's obligation to provide vocational rehabilitation services. (Amend)

(A) Employers who provide compensation and benefits pursuant to section 4123.35 of the Revised Code shall furnish all eligible and feasible injured workers with vocational rehabilitation services equal to or greater in quality and content than the services ~~provided administered by the bureau and managed by the MCO MCOs.~~ provided administered by the bureau and managed by the MCO MCOs.

~~(B) Self-insuring employers who have elected to furnish rehabilitation services directly pursuant to section 4123.66 of the Revised Code may utilize the services of the bureau rehabilitation center.~~

~~(C)~~ Upon referral, a self-insuring employer shall determine whether the injured worker is eligible and feasible for vocational rehabilitation ~~service services~~ using the criteria set forth in rule 4123-18-03 of the Administrative Code. If it is determined that the injured worker is eligible and feasible for vocational rehabilitation ~~service services~~, the self-insuring employer shall provide vocational rehabilitation case management services equal to or greater in quality and content than the services ~~provided administered by the bureau and managed by the MCO MCOs~~, utilizing the services of a provider who meets the minimum credentialing criteria set forth in Rule 4123-6-02.2 of the Administrative Code. The self-insuring employer shall submit a copy of the approved vocational rehabilitation plan to the injured worker and the injured worker's representative.

~~(D)~~(C) The bureau shall inspect and review the quality and content of all authorized self-insuring employers' vocational rehabilitation services in order to determine whether or not such services are equal to or greater in quality and content than the services ~~provided administered by the bureau or and managed by the MCO MCOs~~. Such inspections and reviews shall be conducted upon receipt of evidence indicating that a self-insuring employer's vocational rehabilitation services are of a lesser quality than the services ~~provided administered by the bureau or and managed by the MCO MCOs~~.

~~(E)~~(D) The bureau may direct complaints of sub-standard vocational rehabilitation plans to the bureau's self-insured department for review.

~~(F)~~(E) The self-insuring employer shall promptly pay living maintenance, wages in lieu of compensation, or salary continuation directly to the injured worker. Payments shall be made in accordance with ~~guidelines outlined in~~ paragraph (A) of rule 4123-18-04 of the Administrative Code.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.61, 4121.65, 4121.66, 4123.35
Prior Effective Dates: 7/10/80; 12/7/82; 2/3/92; 1/1/01

Comment [a63]: This change is consistent with the proposed change to OAC 4123-18-01(B).

Comment [a64]: The "bureau rehabilitation center" no longer exists. This change reflects the current reality.

Comment [a65]: This change reinforces the self-insuring employer's obligation to provide a copy of the approved vocational rehabilitation plan in accordance with the rules of this chapter.

4123-18-18 Labor-management-government advisory council. (Amend)

(A) As provided in section 4121.70 of the Revised Code, a statewide labor-management-government advisory council shall be created consisting of twelve members having special knowledge on matters concerning various aspects of the rehabilitation of workers who are disabled due to an injury or occupational disease.

(B) Vacancies on the council shall be filled in the same manner as the original appointment as provided in section 4121.70 of the Revised Code. The council shall appoint a chairperson and vice-chairperson.

(C) The administrator or the administrator's designee shall serve as secretary of the council without vote.

(D) The council shall meet at the call of the chairperson or a majority of the members, and meetings may be requested by the administrator or the administrator's designee. The council shall meet not less than quarterly. Meetings may be held at any location in the state.

(E) Council members shall serve without compensation, except that they shall be reimbursed for the actual and necessary costs of attending meetings upon approval of the bureau of workers' compensation. Payment shall be made in the same manner as other administrative costs of the bureau.

(F) The administrator or the administrator's designee shall prepare the agendas and provide secretarial services to the council to record minutes, prepare reports, and perform other related support services.

(G) The council shall serve in an advisory capacity to the bureau. Those voting affirmatively and negatively on ~~all~~ recommendations of the council shall be identified in the council's official ~~record~~ (minutes). All recommendations of the council shall be reviewed and considered by ~~both~~ the bureau, and the administrator or the administrator's designee shall inform each council member of the disposition of each recommendation.

(H) The functions of the council shall include the following:

(1) Provide timely advice and counsel relative to the rendering of rehabilitation services to injured workers and the quality and effectiveness of such services;

(2) Provide active support of the rehabilitation function and program of the bureau and verbalize that support to peers, legislators, and the community-at-large;

(3) Offer advice on current and future planning within the bureau concerning rehabilitation services;

(4) Offer recommendations for changes of laws, rules, policies, and procedures relative to rehabilitation services;

(5) Offer encouragement to employees with work-related injuries or occupational diseases relative to utilization of the specialized rehabilitation services

Comment [a66]: Hyphen removed as it is inconsistent with the name of the council as stated in R.C. 4121.70.

Comment [a67]: Hyphen removed as it is inconsistent with the name of the council as stated in R.C. 4121.70.

Comment [a68]: Hyphens removed as unnecessary.

Comment [a69]: Hyphen removed as unnecessary.

(l) The administrator or the administrator's designee shall keep all members informed of the internal affairs of the bureau insofar as such may be applicable to their service on the labor-management-government advisory council.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.62, 4121.70
Prior Effective Dates: 12/7/82; 8/22/86; 11/8/86 (Emer); 2/3/92; 1/1/01

Comment [a70]: Hyphen removed as it is inconsistent with the name of the council as stated in R.C. 4121.70.

4123-18-21 Wage loss payments to injured workers who complete rehabilitation programs. (Amend)

(A) In claims with a date of injury on or after August 22, 1986, the bureau shall make living maintenance wage loss payments to injured workers who complete an ~~authorized~~ approved vocational rehabilitation plan, successfully return to work, and experience a wage loss while employed.

Comment [a71]: Effective date of S.B. 307 provision establishing living maintenance wage loss compensation.

(1) The wage loss must be as a consequence of the physical and/or psychiatric limitations caused by the impairments resulting from the allowed conditions in the claim as documented by the injured worker's physician of record on form MEDCO-14 or equivalent.

Comment [a72]: Clarifies that documentation of restrictions must come from the injured worker's physician of record.

(2) Injured workers requesting living maintenance wage loss payments shall be required to submit an application for living maintenance wage loss (on form RH-18 or equivalent) and medical documentation of the physical and/or psychiatric limitations as referenced in paragraph (A)(1) of this rule at each six month request for continuation of wage loss payments.

(a) An injured worker must have successfully returned to work as defined in paragraph (E)(1) of this rule to submit an initial application for living maintenance wage loss payments.

(b) Subsequent applications for living maintenance wage loss payments must be submitted by the injured worker before the specified end date of the restrictions provided by the injured worker's physician of record or every six months, whichever occurs first.

Comment [a73]: Clarifies the application process for living maintenance wage loss compensation.

(3) Injured workers requesting living maintenance wage loss payments shall not voluntarily limit their income by choosing to work fewer hours or at wages below reasonable expectations, if more appropriate jobs are reasonably available within their labor market. If the injured worker voluntarily limits his or her income by choosing to work fewer hours or by accepting a job which does not constitute suitable employment which is comparably paying work, the injured worker's living maintenance wage loss benefits shall be calculated as sixty-six and two-thirds per cent of the difference between the greater of the injured worker's full weekly wage or average weekly wage on the claim for which the injured worker underwent a rehabilitation plan and the weekly wage the injured worker would have earned had the injured worker not voluntarily limited his or her income.

Comment [a74]: Clarifies that an IW who voluntarily limits his or her income may still receive LMWL, but at a reduced amount.

(a) The In determining whether an injured worker has voluntarily limited his or her income, the bureau may review an injured worker's physical limitations, residual abilities, skills, education, labor market and other all relevant factors as necessary in making the determination of voluntary limitation of income set forth in rule 4125-1-01 of the Administrative Code in determining whether the injured worker has returned to suitable employment which is comparably paying work.

(b) An injured worker who wishes to change jobs after the initial receipt of living maintenance wage loss payments must notify the assigned bureau customer service team. The customer service team will bureau shall review the criteria set forth in paragraph (A)(3)(a) of this rule to ensure that no voluntary limitation of income will occur the job the injured worker wishes to change to constitutes suitable employment which is comparably paying work.

(4) In the event the injured worker accepts employment that is below the reasonable expectations of the return to work goals of the vocational rehabilitation plan, or if the injured worker can reasonably be expected to obtain different employment for which

earnings are more comparable to those prior to the injury, the injured worker may be required to make a good faith effort to search for suitable employment which is comparably paying work. In determining whether a good faith effort to search for suitable employment is required, the bureau shall consider factors such as the goals of the vocational rehabilitation plan, the labor market, the skills and work history of the injured worker, and any other factors that would assist in determining whether a good faith job search should be required.

Comment [a75]: Adds a job search requirement as a stand-alone feature and clarifies the circumstances under which a job search may be required (when reasonable under all the circumstances).

(5) To receive living maintenance wage loss payments under this rule after approval of these benefits by the bureau, an injured worker must provide proof of earnings at least every four weeks in the form of pay stubs, payroll reports from the injured worker's current employer, or a wage statement on form C-94(A) or equivalent. If the injured worker submits a C-94(A) completed by the injured worker, the form must be notarized. If the C-94(A) is signed by the employer, the form does not need to be notarized.

Comment [a76]: Clarifies the injured worker's responsibility to provide proof of earnings in order to obtain living maintenance wage loss compensation.

(B) The bureau shall be responsible for calculating living maintenance wage loss payment amounts based upon the ~~injured worker's wage statement or other information on the subject submitted by the injured worker pursuant to paragraph (A)(4) of this rule.~~ Payments shall be sixty-six and two-thirds per cent of the difference between the greater of the injured worker's full weekly wage or average weekly wage on the claim for which the injured worker underwent a rehabilitation plan and the weekly wage received while employed, up to a maximum per week equal to the statewide average weekly wage.

(C) ~~Such~~ Living maintenance wage loss payments shall be issued on a biweekly basis, or on a quarterly basis if the injured worker is self-employed or has a substantial variation in income and reports income to the bureau on a quarterly basis. ~~Wage Living maintenance wage loss payments shall be charged to the surplus fund established by section 4123.34 of the Revised Code.~~

Comment [a77]: Due to risks inherent in self employment and variation in income, quarterly payments create a fairer payment plan for these injured workers.

(D) Payments may continue for up to a maximum of two hundred weeks but shall be reduced by the corresponding number of weeks in which an injured worker receives payments pursuant to division (B) of section 4123.56 of the Revised Code.

(E) The following definitions shall apply to the adjudication of applications for living maintenance wage loss payments:

(1) "Successful return to work" as a result of an approved vocational rehabilitation plan means that the injured worker has obtained employment within sixty days of closure of the injured worker's approved vocational rehabilitation plan and the employment:

(a) Is within the physical and/or psychiatric limitations caused by the impairments resulting from the allowed conditions in the claim in which the injured worker completed the vocational rehabilitation plan, as documented by the injured worker's physician of record; and

(b) Is reasonable in comparison with the return to work goals of the vocational rehabilitation plan completed by the injured worker.

Comment [a78]: Defines "successful return to work" for purposes of living maintenance wage loss compensation, which was not previously defined in the rule.

(2) "Suitable employment" and "comparably paying work" shall have the same meaning as in rule 4125-1-01 of the Administrative Code.

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.62, 4121.70
Prior Effective Dates: 8/22/86 (Emer); 11/17/86 (Emer); 1/10/87; 2/3/92; 1/1/01

**4123-18-22 Fees for use of services of the bureau rehabilitation center.
(Rescind)**

Comment [a79]: The "bureau rehabilitation center" no longer exists. This change reflects the current reality.

(A) Pursuant to division (C) of section 4121.62 of the Revised Code, the administrator of workers' compensation shall establish fees for use of services offered by the bureau's rehabilitation center, the BWC rehabilitation center in Columbus

(B) The fees will take into account the usual, customary, and reasonable fees charged for like services in the area in which the services are provided, as determined by the bureau's medical section. No fees shall be established in excess of the bureau's current fee maxima schedule.

(C) Fees for use of programs or services of the centers will be charged to the in accordance with the approved fee schedule with authorization of the MCO for the services rendered. Upon receipt of an approved itemized bill, the fees will be paid by the MCO from the appropriate fund for state fund employers, and by the bureau from the self-insured surplus fund for self-insuring employers who have not elected to pay rehabilitation costs directly, and by self-insuring employers who have elected to pay rehabilitation costs directly pursuant to division (D) of section 4121.66 of the Revised Code.

(D) The specific program descriptions, protocols, and fee schedules for the programs and services offered by the rehabilitation center shall be published periodically by the bureau. The bureau will provide fourteen days advance notice of any changes in programs or fee schedules, and any increases in fees shall apply prospectively only to services authorized after the effective date of the change. The bureau may discount fees from the fee schedule at its discretion. Copies of the services offered and the fee schedule may be obtained upon request by contacting the rehabilitation center.

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05

Rule Amplifies: 4121.62, 4121.66

Prior Effective Dates: 10/11/94, 1/1/01



Bureau of Workers' Compensation

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Recommendations for changes to the vocational rehabilitation rules contained in 4123-18 from LMG Advisory Council, International Association of Rehabilitation Professionals (IARP), Ohio Association of Rehabilitation Facilities (OARF), Ohio Association for Justice (OAJ) and Ohio Physical Therapy Association (OPTA).

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
1	4123-18-01 (A)	OARF recommended that BWC insert language after paragraph (A) prohibiting self-dealing.	This would eliminate the conflict of interest when an MCO refers an injured worker to a vocational rehabilitation company the MCO has a financial interest in.		This issue is currently being evaluated by BWC. Therefore, action on this comment is being held in abeyance until BWC's evaluation is completed.
2	4123-18-01 (A)	The MCO League provided the following feedback: Service provider relationships exist within any industry. The affiliation between an MCO and a BWC certified provider is no different or "questionable" than a provider of record making a physical rehabilitation referral to a therapy facility that he/she owns or an OARF member facility making a referral to a sister affiliate for some other service such as an FCE, etc. The issue lies not in the relationship that often enables better, more consistent outcomes, but in the disclosure of the affiliation to the injured worker and his/her representative. Informed consent is really at the heart of resolving this issue and addressing the concern initiated by OARF.			This issue is currently being evaluated by BWC. Therefore, action on this comment is being held in abeyance until BWC's evaluation is completed.
3	4123-18-01 (B)	LMG Advisory Council suggested removing the reference to combining MCO responsibility with BWC.	Since the MCO is legally and contractually responsible for the management of vocational rehabilitation to injured workers, the LMG saw no reason to add the "bureau" to the sections cited.		BWC added alternate language "...administered by the bureau and managed by an MCO..." to better reflect the current processes.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
4	4123-18-01 (B)	OAJ suggested adding the word "shall" in 4123-18-01 (B).	Wording clarifies that self-insuring employers have the responsibility to ensure that vocational rehabilitation services provided to their injured workers are "equal to or greater than" those services provided by BWC to injured workers.		Added the words "shall also" to reinforce the self-insuring employer's responsibilities.
5	4123-18-01 (C) (3)	IARP suggested adding that BWC audit self-insuring employers' vocational management practices under 4123-18-16 (C) (3).			This is already addressed in 4123-16 (C) (3).
6	4123-18-02 (C)	LMG Advisory Council suggested removing the reference to combining MCO responsibility with BWC.	Since the MCO is legally and contractually responsible for the management of vocational rehabilitation to injured workers, they see no reason to add the "bureau" to the sections cited.		Revised language to provide that BWC shall ensure injured workers are informed of the opportunities available.
7	4123-18-02 (C)	The MCO League agrees with the LMG Stakeholder rationale.			Revised language to provide that BWC shall ensure injured workers are informed of the opportunities available.
8	4123-18-03 (A) (1)	OARF recommended that BWC retain the deleted language in (A) (1): "As a worker progresses toward medical stability he/she should be assessed for vocational rehabilitation as part of continuum of care, and to facilitate progression toward vocational rehabilitation and return to work."		Retaining this language would not address OARF's substantive concerns. It was agreed that BWC will address OARF's issue through policy.	The language will remain deleted.
9	4123-18-03 (A) (1)	The MCO League requested that the BWC provide further information concerning how this issue has been addressed through policy.		Return to work is the goal of vocational rehabilitation not medical treatment to ready the injured worker for vocational rehabilitation. Chapter 4 services have a return to work focus as a requirement for all vocational services.	The language will remain deleted.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
10	4123-18-03 (B) (4)	LMG Advisory Council suggested removing the reference to combining MCO responsibility with BWC.	Since the MCO is legally and contractually responsible for the management of vocational rehabilitation to injured workers, they see no reason to add the "bureau" to the sections cited.		Added language phrase "with bureau oversight" to clarify that the MCO, with BWC oversight, is responsible for decisions regarding feasibility for vocational rehabilitation.
11	4123-18-03 (B) (4)	The MCO League recommends removal of BWC's attempted solution to add "with BWC oversight" concerning decisions related to vocational rehabilitation feasibility. The proposed rule does not address how the disparity in the feasibility determinations made by BWC and the MCO will be resolved. MCOs agree with the LMG Stakeholder rationale that the MCO is legally and contractually responsible for the management of voc rehab services and there should be no inclusion of BWC in this section.			Added language phrase "with bureau oversight" to clarify that the MCO, with BWC oversight, is responsible for decisions regarding feasibility for vocational rehabilitation. Disparity in feasibility determinations made by BWC and the MCO are addressed through 4123-6-04.6.
12	4123-18-03 (C) (3)	IARP suggested adding "or" after each alpha character.		BWC will add "or" after each alpha character.	"Or" has been added after each alpha character.
13	4123-18-03 (C) (3) (a)	IARP suggested re-wording 4123-18-03 (3) (a) "On the date of referral, the injured worker is receiving or has been awarded temporary total, non-working wage loss or permanent total compensation for a period of time that must include the date of referral. For purposes of this section, payments made in lieu of temporary total compensation (e.g. salary continuation) shall be treated the same as temporary total compensation."	IARP felt the proposed wording was confusing.		BWC has reworded the provision as follows to make the concept more clear: " The injured worker is receiving or has been awarded temporary total, non-working wage loss or permanent total compensation for a period of time that must include the date of referral. For purposes of this section, payments made in lieu of temporary total compensation (e.g. salary continuation) shall be treated the same as temporary total compensation." IARP was provided this wording and did not object to it.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
14	4123-18-03 (C) (3) (d)	IARP suggested changing wording in 3(d), by changing the word "job" to "physical" or "functional" restrictions and suggested changing all other sections with a similar reference.		BWC believes this should not be changed because an injured worker's limitations must be linked to his/her ability to return to work to his/her job of injury.	The rule cannot be read in a vacuum and must be read in conjunction with the entire chapter.
15	4123-18-03 (C) (4)	IARP suggested that 4123-18-03 (C) (4) allow injured workers who are underemployed and receiving working wage loss be eligible for vocational rehabilitation services.			Currently, the only injured workers eligible for vocational rehabilitation services while working are those seeking job retention services.
16	4123-18-03 (E) (2) (b)	OPTA suggested that the first line say "a healthcare provider" instead of "'physician of record'" provides a written statement indicating the injured worker has limitations...."		BWC requires that the injured worker's physician of record (POR) provide restrictions related to the allowed conditions in the claim, not any healthcare provider.	BWC will keep the current wording, "physician of record," because it is a term of art recognized by BWC and its constituents.
17	4123-18-03 (E) (2) (b)	OPTA suggested that the first line state that "... injured worker <u>has work limitations</u> or is experiencing an increase in symptoms".	Current rule limits job retention eligibility only to an increase in symptoms. The injured worker could be working but below acceptable productivity levels.		BWC added the following language to the rule: "...the injured worker has work limitations related to the allowed conditions in the claim that negatively impact the injured worker's ability to maintain employment...."
18	4123-18-03 Section (H)	IARP objected to 4123-18-03 Section (H) regarding initial feasibility decisions due to chronic problems with application of the feasibility factors.			BWC has completed a reworking of the language for paragraph H.
19	4123-18-03 (H) (1)	LMG Advisory Council suggested that the feasibility definition in (H) (1) of this rule was all that was needed. This would allow IC hearing officers to rely on the claim file records.			BWC has completed a reworking of the language for paragraph H.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
20	4123-18-03 (H) (1)	The MCO League agrees with the LMG Stakeholder suggestion that the feasibility definition in (H)(1) of this rule was sufficient. The fact that BWC modified the language to shorten the proposed list and to be more reflective of a "neutral" stance, does not negate the fact that the language was sufficient in its original format and should not be revised.			BWC has completed a reworking of the language for paragraph H.
21	4123-18-03 (H) (2) (a-h)	OARF recommended BWC delete the list of factors to be evaluated in determination of feasibility.	Many of these factors could be used subjectively to exclude an injured worker from vocational rehabilitation and should actually be part of a plan of care. These requirements could make it more difficult for injured workers to attain feasibility.		BWC has completed a reworking of the language for paragraph H.
22	4123-18-03 (H) (2) (a-h)	The MCO League agrees with OARF and affirms that BWC at times uses the feasibility definition as a subjective means by which to exclude an injured worker from vocational rehabilitation services. The feasibility definition as written is/was sufficient. The fact that BWC modified the language to shorten the proposed list and to be more reflective of a "neutral" stance, does not negate the fact that the language was sufficient in its original format and should not be revised.			BWC has completed a reworking of the language for paragraph H.
23	4123-18-03 (H)(2)	LMG Advisory Council suggested that self-insuring employers could use 4123-18-03 (H) (2) to exclude injured workers.			BWC has completed a reworking of the language for paragraph H.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
24	4123-18-03 (H) (1) (2)	During the May 21, 2009 LMG Advisory Council meeting, the council gave feedback that they continue to object to the feasibility factors being listed in the rule. They feel by including the detailed criteria used to determine feasibility that injured workers will be excluded from participating in rehabilitation programs, when in fact a rehabilitation plan could help the injured worker to overcome challenging circumstances.	The LMG Council provided a statement of their position to the BWC Board of Directors.		BWC has completed a reworking of the language for paragraph H.
25	4123-18-03 (H) (2) (a) and (H) (2) (b), (H) (2) (c) and (H) (2) (e)	IARP believes that feasibility should be determined by vocational professionals, especially in complex cases.	IARP says that MCOs currently override the PORs' written support for rehabilitation. This feasibility factor should support the PORs' recommendations. IARP also does not trust simplified phone calls with injured workers which quote the injured workers as not being interested in services. IARP contends that the term "compliance" is misused and not well documented.		The vocational rehabilitation professional, working directly with an injured worker, does determine feasibility for services. However, the MCOs and BWC have oversight responsibility on all service authorizations. A party to the claim may appeal any decision.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
26	4123-18-03 (H) (2) (e)	<p>LMG Advisory Council thinks the feasibility definition is sufficient to make decisions and that including the list of feasibility factors would limit the pool of injured workers who will ultimately be deemed appropriate by BWC for vocational rehabilitation services.</p> <p>In addition, the language in 4123-18-03 (H) (2) (e) could be construed to limit participation of injured workers with medical and psychological issues, including pain issues, medication or substance abuse issues, both related and unrelated to the allowed conditions that would reasonably prevent the injured worker's full participation.</p>	<p>LMG Advisory Council suggests that the list of feasibility factors be shortened so more injured workers can be given the opportunity to participate in services.</p> <p>LMG suggests that the language in this section may be more appropriate in a training policy.</p>		<p>BWC has completed a reworking of the language for paragraph H.</p>
27	4123-18-03 (H) (2) (e)	<p>The MCO League agrees with the LMG Advisory Council and affirms that BWC at times uses the feasibility definition as a subjective means by which to exclude an injured worker from vocational rehabilitation services.</p> <p>The feasibility definition as written is/was sufficient. The fact that BWC modified the language to shorten the proposed list and to be more reflective of a "neutral" stance, does not negate the fact that the language was sufficient in its original format and should not be revised.</p>		<p>Feasibility decisions are the initial purview of the MCOs, with BWC oversight. The additional language is to serve as a guide that reduces subjectivity and limited clarity around the initial determination of feasibility. Not only will this support transparency to the injured workers and their representatives, but also provide support for the MCO in how they arrived at the initial decision.</p>	<p>BWC has completed a reworking of the language for paragraph H.</p>
28	4123-18-03 (H)(2)(f)	<p>IARP believes that voluntary abandonment should be further explored legally before it is included in feasibility decisions.</p>			<p>This item was removed, as there may be cases where a voluntary abandonment order should not be considered in determining feasibility for vocational rehabilitation.</p>

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
29	4123-18-03 (H) (2) (f)	OAJ thought that "voluntary abandonment of employment" was an issue for temporary total compensation, not feasibility for vocational rehabilitation.			This item was removed, as there may be cases where a voluntary abandonment order should not be considered in determining feasibility for vocational rehabilitation.
30	4123-18-03 (I) (1) (2)	LMG Advisory Council suggested that the two dispute resolution processes be blended.	This would simplify and speed up the adjudication process.		BWC will not be blending these dispute resolution processes at this time.
31	4123-18-03 (I) (1) (2)	The MCO League agrees with the LMG Stakeholder rationale.			BWC will not be blending these dispute resolution processes at this time.
32	4123-18-04 (A)	OAJ does not think that the start of living maintenance payments should be so rigid. They think the rule should leave some room for discretion.	OAJ says the rule will result in injured worker's not receiving living maintenance due to waiting for a third person to approve it. They think injured workers should receive living maintenance as soon as they sign the vocational rehabilitation plan.	BWC thinks the first date the injured worker participates in an approved vocational rehabilitation plan should be the date living maintenance is paid.	BWC will retain the proposed language.
33	4123-18-04 (A)	LMG Advisory Council suggested removing the reference to combining MCO responsibility with BWC: "Living maintenance payments shall begin on the date that the injured worker actually begins to participate in an MCO/bureau approved rehabilitation plan".	Since the MCO is legally and contractually responsible for the management of vocational rehabilitation to injured workers, they see no reason to add the "bureau" to the sections cited.		The reference to the MCO was removed, as it is solely the responsibility of BWC to authorize living maintenance payments.
34	4123-18-05 (B) (1)	OPTA recommends that additional wording be added: (1) Identification of the injured worker's most recent job title, job/task demands and work performance difficulties and (2) Identification of the injured worker's current functional capacities/limitations, return to work goals and barriers to employment.			Many elements must be considered in the development of a vocational rehabilitation plan, each unique to the circumstances of the case. BWC added the words "...at a minimum..." to the introduction of the plan elements.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
35	4123-18-05 E (1) and (2)	IARP does not agree with 4123-18-05 (E) (1) and (2) closure reasons because they think these reasons will rule out return to work follow up.			BWC removed return to work closure statement #2. Closure statement #1 allows for follow up services before closure.
36	4123-18-05 (E)	LMG Advisory Council questioned closure based on return to work and job retention.			BWC removed closure statement #2 (plan closure after return to work).
37	4123-18-05 (E) (3)	IARP does not agree with 4123-18-05 E (3) closure reason because it is too subjective to close a rehabilitation file due to injured worker's failing to fulfill the responsibilities of the vocational rehabilitation plan.			BWC added language in the opening sentence of (E) requiring that any reason for case closure must be "...objectively determined or identified...".
38	4123-18-05 E (4)	IARP does not agree with 4123-18-05 (E) (4) closure reason because it is too subjective to close a rehabilitation file due to injured worker's inability to attain the goals of the rehabilitation plan. This could be construed as failed or non-compliance.		This wording is focused on the goals of the plan, not the services, or <u>the</u> injured worker's motivation.	BWC added language in the opening sentence of 4123-18-05 (E) requiring that any reason for case closure must be "...objectively determined or identified...."
39	4123-18-05 E (4)	IARP does not agree with 4123-18-05 E (5) closure reason because it is highly subjective to close a rehabilitation file because the injured worker has refused, without good cause, to accept an offer of employment within the vocational goal of the rehabilitation plan. This should require a BWC Policy or office review.		ADR is already incorporated into the process and a BWC vocational rehabilitation professional reviews all disputes.	A review of case closure for this reason and all reasons is already built into the process.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
40	4123-18-05 (E) (6)	LMG Advisory Council suggested removing the reference to combining MCO responsibility with BWC: 4123-18-05 Section (E) first sentence and in section (6).	Since the MCO is legally and contractually responsible for the management of vocational rehabilitation to injured workers, they see no reason to add the "bureau" to this section.		BWC will retain the language because both the MCO and BWC have a role to play in the final authorization of any plan. The MCO approves the vocational services and BWC approves the living maintenance portion of the plan.
41	4123-18-05 (E) (6)	The MCO League agrees with the LMG Stakeholder rationale.			BWC will retain the language because both the MCO and BWC have a role to play in the final authorization of any plan. The MCO approves the vocational services and BWC approves the living maintenance portion of the plan.
42	4123-18-05 (E) (6)	LMG Advisory Council does not agree with : 4123-18-05 Section (E) number (6).	LMG states, "It is hoped that a process will be allowed to take place that works to find a reasonable plan process, within the current rule structure, that meets the collective objectives of the regulator, the professional case manager and the rehabilitation participant".	The language is added to ensure the rehabilitation plan is moving in one direction at a time.	It is essential and it is current practice that the MCO, BWC and the injured worker work together in the development of a vocational rehabilitation plan. It would be irresponsible for a plan to be approved that the injured worker has not sincerely bought into.
43	4123-18-05 (E)(6)	IARP does not agree with 4123-18-05 (E) (6) closure reason because it is highly subjective to close a rehabilitation file because the injured worker does not agree with the MCO's or bureau's decision to approve or deny specific vocational rehabilitation plan services.			BWC added language in the opening sentence of 4123-18-05 (E) requiring that any reason for case closure must be "...objectively determined or identified...."

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
44	4123-18-05 (E)(6)	LMG Advisory Council suggested that until attempts are made to determine the reasons why the injured worker does not agree with the MCO's or bureau's decision to approve or deny specific plan services, the rehabilitation file be "held" instead of closed.		The MCO and BWC per policy make all attempts to resolve these issues today. A "hold" will not allow the payment of living maintenance until the issue is heard through dispute resolution and the Industrial Commission.	BWC added language in the opening sentence of 4123-18-05 (E) requiring that any reason for case closure must be "...objectively determined or identified...."
45	4123-18-05 (E)(6)	OAJ suggested some type of "hold" be implemented instead of closure.		The MCO and BWC per policy make all attempts to resolve these issues today. A "hold" will not allow the payment of living maintenance until the issue is heard through dispute resolution and the Industrial Commission.	BWC added language in the opening sentence of 4123-18-05 (E) requiring that any reason for case closure must be "...objectively determined or identified...."
46	4123-18-05 (E)(8)	IARP does not agree with 4123-18-05 E (8) closure reason because they disagree with the wording "in part". This did not make sense to them.		Injured workers can settle their claim for just indemnity or medical payments, or both, but IARP was unaware of this. Settlement of either indemnity or medical payments will rule out rehabilitation services. This is not in reference to Attorney General court settlements.	BWC has modified the language to "The claim is settled (medical and/or indemnity)." Once explained, IARP accepted this rule.
47	4123-18-05 (E)(8)	The MCO League is fine with the provision that claims settled for indemnity, medical, or both rule out the possibility of vocational rehabilitation services. However, this has not been the practice within BWC to date. To the contrary, BWC has made a distinction between medical services versus "vocational" and the MCO has been notified via BWC's Legal department that voc rehab may, in fact, take place when a claim has been settled for Medical. This directive was received as recently as July 2008.			

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
48	4123-18-08 (A) (4), (C) (1) and 4123-18-14 (A)	LMG Advisory Council suggested removing the reference to combining MCO responsibility with BWC.	Since the MCO is legally and contractually responsible for the management of vocational rehabilitation to injured workers, they see no reason to add the "bureau" to the sections cited.		BWC removed the reference to the party approving a rehabilitation plan and added simply that the plan must be approved.
49	4123-18-16 (C)	OARF recommended that BWC deleted the sentence "Such inspections and reviews shall be conducted upon receipt of evidence indicating that a self-insuring employer's rehabilitation services are of a lesser quality than the services provided by the bureau or the MCO."	OARF recommended adding: "The bureau shall annually report to the board of directors and the LMG advisory council the results of its inspection and review of the quality and content through random audits of self-insuring employer's rehabilitation services."		BWC indicated that the bureau's self-insured department already conducts audits of all self insured employers which includes the provision of vocational rehabilitation services.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
50	4123-18-16 (C)	OAJ suggested additional wording to the effect that self-insuring employers must submit a copy of their rehabilitation plan to the injured worker and the injured worker's representative. OAJ added that BWC should also get a copy to properly administer the rule.		It has been determined that some self-insuring employers do not provide rehabilitation plans to their injured workers. Under the rules, self-insuring employers have the responsibility to furnish all eligible and feasible injured workers with rehabilitation services equal to or greater in quality and content than the services administered by the bureau and managed by the MCOs. An injured worker in a vocational rehabilitation program would expect, at a minimum, to be provided with a plan and access to appropriate providers and services as the plan required.	BWC added the suggested language to the rule requiring that a copy of the plan be provided to the injured worker and the injured worker's representative.
51	4123-18-16 (C)	MCO League comment: OAJ's suggestion infers that there is some inherent value to a formal written vocational rehabilitation plan. The value and/or intent of this change is questionable at best. The development of a written plan is a cost driver within the provision of vocational services and should not be mandated for a self-insured employer. As the fiduciary administrator of the Surplus Fund, it is BWC's prerogative to require this documentation within the State Funded (Surplus Reimbursement) coverage requirements. But, it should not be a mandated expense for Self Insured Employers who have opted out of the Surplus Fund. Neither the presence of, nor the absence of a written vocational rehabilitation plan is the basis upon which quality, comprehensive vocational services can or should be evaluated. Please omit the proposed final sentence in Section (B).			Providing individualized written vocational rehabilitation plan is a best practice in the profession of rehabilitation counseling. The documentation insures that all parties are aware of agreed upon services, time frames, providers, payments, and rationale for return to work services. Every state funded injured worker is provided a written vocational rehabilitation plan.

Line #	Rule #	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
52	4123-18-21 (A)(3)	The BWC Board was concerned that the language "Injured worker may be required to make a good faith job search..." might be used as an absolute requirement for injured workers to perform a job search instead of evaluating when this requirement would go into effect.			BWC added language to the rule to clarify when a job search will be required. Also added language which mirrors the Working Wage Loss rule that provides LMWL if an injured worker is voluntarily limiting his or her income but at a reduced rate.
53	4123-18-21 (A)(4)	IARP doesn't like requiring use of specific forms.		The rule references to forms say "or equivalent".	IARP accepted this explanation.
54	4123-18-22	OARF recommended that BWC retain this rule until such time as the underlying statute is repealed.	In addition, since the vocational rehabilitation fee schedule is established in a manner different from the medical fee schedules, OARF recommended that new language be inserted to reflect that difference.		BWC will rescind this rule, as it is solely applicable to the J. Leonard Camera Center, which is no longer in existence. The new fee schedule language will be introduced in the summer of 2009 in a separate rule.

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rules - 4123-5-02; 4123-5-11; 4123-5-13; 4123-5-18; 4123-5-20; 4123-5-21 **Rule Review**

1. The rule is needed to implement an underlying statute.

**Citation: 4121.121, 4121.11, 4121.12, 4121.13, 4121.30, 4121.31 in
conjunction with 4123.66, 4123.05**

2. The rule achieves an Ohio specific public policy goal.

What goal(s):

- **4123-5-02 – Rescinded**
- **4123-5-11 – Provides employer’s signature requirement for various applications and reports submitted to BWC.**
- **4123-5-13 – Defines payment of funeral expenses.**
- **4123-5-18 – Defines documentation requirements for payment of temporary total compensation.**
- **4123-5-20 – Establishes guidelines for wage advancement agreements; vacation pay, regular salary/wages or sick leave payment in relation to temporary total compensation.**
- **4123-5-21 – Establishes that the death of the claimant ceases further action on any application filed by the claimant.**

3. Existing federal regulation alone does not adequately regulate the subject matter.

4. The rule is effective, consistent and efficient.

5. The rule is not duplicative of rules already in existence.

6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. The rule has been reviewed for unintended negative consequences.

8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: Review with Ohio Association of Justice; OSBA Workers’
Compensation Committee and Ohio Self Insured Association representatives

9. The rule was reviewed for clarity and for easy comprehension.

10. The rule promotes transparency and predictability of regulatory activity.

11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rules - 4123-3-08 and 4123-3-09

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: 4121.12, 4121.121, 4121.30, 4121.31

2. The rule achieves an Ohio specific public policy goal.

What goal(s):

- **4123-3-08: This rule outlines procedures for filing applications for compensation and/or benefits; amended to address processing of a non-contested claim for an injured worker who is in the Armed Services of the United States and is unable to sign the claim application.**
- **4123-3-09: This rule outlines procedures for processing application for benefits; amended to address processing a contested claim for an injured worker who is in the Armed Services of the US and is not available for adjudication of the claim.**

3. Existing federal regulation alone does not adequately regulate the subject matter.
4. The rule is effective, consistent and efficient.
5. The rule is not duplicative of rules already in existence.
6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.
7. The rule has been reviewed for unintended negative consequences.
8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: Review with Ohio Association of Justice; OSBA Workers' Compensation Committee and Ohio Self Insured Association representatives

9. The rule was reviewed for clarity and for easy comprehension.
10. The rule promotes transparency and predictability of regulatory activity.
11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

BWC Board of Directors
Executive Summary
Chapter 5 Miscellaneous Provisions

Introduction

Chapter 5 contains miscellaneous provisions for the administration of claims. As part of the five-year review process, this chapter has been reviewed and changes are being proposed. There are six rules in Chapter 5, four will be revised, one will remain the same and one will be rescinded. With the exception of Rule 4123-5-20, these rules were last reviewed in 1978. Rule 4123-5-20 was revised in 2007 pursuant to a newly issued salary advancement policy.

Background Law

The statutory authority for the rules included in Chapter 5 is found at R.C. 4121.121, 4121.11, 4121.13, 4121.30, 4121.31, and 4123.05. Collectively, they provide the general framework for the management of the BWC and the administration of claims. Specifically, R.C. 4121.11 provides that the “bureau of workers’ compensation may adopt its own rules of procedure and may change the same in its discretion.”

Proposed Changes

- To rescind Rule 4123-5-02
- To transfer the relevant provisions in current Rule 4123-5-02 to amended Rules 4123-3-08(A) and 4123-3-09(B)(2) found in Chapter 3. Note: The current Rule 4123-5-02, which addresses Armed Services claims, makes reference to the Soldiers and Sailors Relief Act (SSRA). However, the SSRA was amended in 2003 and is now entitled the Servicemembers Civil Relief Act (SCRA). The change to SCRA will be reflected in amendments to Rules 4123-3-08(A) and 4123-3-09(B)(2)
- To amend Rule 4123-5-13(B) to allow payment of exceptional transportation costs to support the purpose inherent in the rule.
- To amend Rule 4123-5-18(D) to permit BWC to request information from the claimant to ensure appropriate entitlement to benefits.
- To amend Rule 4123-5-20(A) to clarify the time period for filing a wage agreement form with BWC.
- To amend Rule 4123-5-11 to eliminate unnecessary words, fix sentence structure and grammar, and make rule gender neutral.
- Rule 4123-5-21 is unchanged.

External Stakeholder Input

The rules were sent to the Ohio Association for Justice (members Phil Fulton and Bob Kendis); the Ohio State Bar Association's Workers' Compensation Committee members and the Ohio Self Insured Association on 2/6/09 and 2/23/09. For Rule 4123-5-18(D), BWC adopted the request from Mr. Fulton and Mr. Kendis to add language that would not limit the claimant to only filing the C-84 form, but allow other equivalent forms with the same information. No other feedback was received from the other above-referenced organizations.

Chapter 4123-5 Five Year Rule Review Rules

4123-5-02 Armed services claims (Rescind)

Comment [PW1]: This rule is to be rescinded and the relevant language added in rules 4123-3-08 and 4123-3-09.

(A) It is hereby directed that the Bureau's policy with reference to claims applications that are filed by claimants whose signatures have not been obtained because they have left for the Armed Services of the United States, and wherein a positive allegation over the signature of the employer, or the wife or parents of the claimant, or the next friend, is to the effect that the claimant is in the Armed Services, and provided further that the claim is not contested, such claims applications shall be numbered, docketed, and processed the same as claims that are filed in the regular manner.

(B) This is to further authorize the employees of the Bureau in such claims applications if it appears that the case is compensable, to pay the medical bills that are submitted in connection with such claims. However, compensation payments are not to be made to the claimant until a legal application signed by said claimant, even though he is in the Armed Services, is received. If such claim is contested by the employer, or if it appears from the proof that is placed on file that there is a doubt as to its compensability, an order shall be placed in the claim file reciting the fact that claimant is in the Armed Services and that the matter shall be continued in accordance with the Soldiers' and Sailors' Relief Act until such time as the claimant indicates to the Bureau that he is available for the final adjudication of the claim.

Effective: 1/9/67

4123-5-11 Employer's reports must be signed by officer or person in employ of employer. (Amend)

~~It is hereby directed that~~ The bureau of workers' compensation will not accept an employer's report on application for payment of compensation and/or benefits, payroll reports, settlement sheets, and other instruments, which employers are required to submit to the bureau of workers' compensation will not be accepted unless the document is signed by an officer in the organization of the employer, or a person in the employ of the employer, who is duly authorized to sign such instruments. The person signing such instruments for the employer shall indicate in what capacity he the person is employed (title). No instruments purporting to authorize any service organization or any other person to sign such instruments for an employer shall be recognized as granting such authority.

Effective: 1/9/78

4123-5-13 Funeral expenses; what constitutes, amount to be paid. (Amend)

(A) ~~It is hereby directed that the~~ The date of death shall govern the amount of funeral benefits to be paid in death claims, and that funeral expenses shall constitute all services rendered in connection with the dead bodies of killed employees, or of employees who have died as a result of injury or occupational disease. In such cases no disbursements shall be made in excess of the amount allowed by law for funeral expenses.

(B) In cases where an attempt was made by the ambulance service, by a physician or at a hospital emergency room to revive the employee and such attempt was in the nature of treatment (e.g. use of oxygen, artificial respiration, injection, medication, electroshock, etc.), payment for such services and for the use of equipment shall be made in addition to the payment for funeral expenses. The bureau may make payment for exceptional transportation costs in addition to the payment of funeral expenses. (e.g. returning the body when the death occurred outside the area where the deceased lived.)

Comment [PW2]: This additional benefit mitigates unforeseen transportation cost and supports the purpose inherent in the rule.

Effective: 1/9/78

4123-5-18 Medical proof required for payment of compensation. (Amend)

(A) Except as provided in paragraph (B)(1)(b) of rule 4123-3-09 of the Administrative Code, no payment of compensation shall be approved by the bureau in a claim unless supported by a report of a physician duly licensed to render the treatment.

(B) In evaluation of sufficiency of medical proof the following criteria shall be considered:

- (1) The nature and type of injury or occupational disease;
- (2) Is the diagnosis consistent with the description of events resulting in the injury or occupational disease, as shown by proof of record;
- (3) Is the disability rating based solely on condition or conditions for which the claim is recognized;
- (4) Is the disability rating based on objective symptoms of disability as a direct result of the injury or occupational disease in the respective claim; "objective symptoms" means those signs and indications which a physician discovers from an examination of his the patient, as distinguished from subjective symptoms which he the physician learns from what his the patient tells him;
- (5) Did the physician state reason or reasons for his opinion?

Comment [PW3]: Removed gender references

(C) Whenever payment of compensation cannot be made due to lack of medical proof, the claimant shall be immediately advised of the necessity to submit appropriate medical proof, as specified in paragraph (A) of this rule.

(D) In cases of continued temporary disability as a result of the allowed injury or occupational disease it shall be the duty of the claimant to submit periodic medical reports ~~of~~ and the signed request for temporary total disability compensation (form C-84) or an equivalent form or document containing the information on the C-84 form to support disability to assure regular payment of compensation. The frequency of filing such reports depends on the type and nature of the injury or occupational disease and the degree of disability. ~~As a general rule, monthly reports of temporary total disability are required.~~

Comment [PW4]: Requiring submission of signed form to request temporary total compensation facilitates obtaining information from the claimant to ensure appropriate entitlement to benefits.

Comment [PW5]: Language clarification not necessary as preceding sentence covers filing frequency.

Effective: 1/9/78

4123-5-20 Payment of compensation when advancements are made during period of disability. (Amend)

(A) Except for payments made to claimants under a contract of hire or under a collective bargaining agreement by an employer that is a professional sports franchise domiciled in Ohio, whenever a claimant and the employer advise the bureau in writing that the wages were paid or the advancements were made solely for the purpose of assisting the claimants in obtaining necessary maintenance and care during a period not to exceed twelve weeks following an injury sustained or occupational disease contracted by the claimant in the course of and arising out of employment, particularly while a claim for compensation is being acted upon by the bureau, and the claimant and employer had mutually agreed that the employer is to be reimbursed, at least to the extent of any compensation paid to the claimant over the same period in which the wages were paid or the advancements made, the bureau shall issue warrants in payment of compensation awarded for a period not to exceed twelve weeks commencing from the date of such an injury or beginning of disability, which warrants are to be mailed to the claimant in care of the employer with instructions that the warrants are to be endorsed personally by the claimant. The bureau will not honor the agreement unless the written notice of the agreement is signed by the employer and claimant and filed with the bureau within thirty days of the signing of the agreement by the employer and the claimant beginning date the period in the agreement covers. The warrants to be sent in care of the employer are not to be in payment of compensation for disability in excess of a period of twelve weeks closely following the date of injury or beginning of disability, unless under special circumstances the bureau authorizes the sending of warrants in payment of compensation for disability beyond the twelve weeks in care of the employer.

Comment [PW6]: Clarified time period for filing of wage agreement form with BWC to ensure timely submission.

Comment [PW7]: Deleting and replacing with new language.

(B) Whenever an employer that is a professional sports franchise domiciled in Ohio makes payment pursuant to the terms of a contract of hire or a collective bargaining agreement during a period of disability resulting from the injury or occupational disease, the aggregate amount of such payments shall be deemed an advanced payment. Upon the filing of proof of such payments, compensation payments under sections 4123.56 to 4123.58 of the Revised Code shall be reimbursed by the bureau directly to the employer if it is a state fund employer unless payment has been made to the claimant prior to the bureau's receipt of the employer's proof of an advanced payment. Self-insured employers shall apply the aggregate amount of advanced payments to a claimant to offset that claimant's future payments of compensation under section 4123.56 to 4123.58 of the Revised Code. Employer reimbursements and offsets shall apply only where the employee's application for compensation is pending on or after August 22, 1986.

(C) Where a claimant is entitled to vacation with pay, payment of wages for a vacation period during the period of temporary disability resulting from injury or occupational disease shall not be deemed an advancement nor shall such payment be applied to offset any compensation that is payable for that period of time.

Where claimants are paid a regular salary during the period of disability on any other basis, for example, sick leave, payment of compensation for temporary disability, compensation cannot be paid so long as such regular salary or wages are paid, unless the claimant and the employer notify the bureau in writing that such salary or sick leave was paid as an advancement.

Effective: 8/15/07

4123-5-21 Abatement of claims. (No Change)

(A) When a claimant dies, action on any application filed by the claimant, and pending before the bureau or the industrial commission at the time of his death, is abated by claimant's death.

(B) Abatement of action, as described in paragraph (A) of this rule, does not apply to payment for medical and hospital treatment, for medicine, nursing, and other health care services rendered as a result of the injury or occupational disease for which the claim was allowed during the deceased claimant's lifetime, provided that the respective bills were filed within the time as required by law and by the rules of the industrial commission and the bureau.

Effective: 1/16/78

4123-3-08 Preparation and filing of applications for compensation and/or benefits (Amend)

(A) Preparation and execution of forms.

(1) The "First Report of Injury" form (FROI-1) for applying for payment from the state insurance fund due to an injury, occupational disease, or death shall be completed by the employee. The employee shall sign the FROI-1 at the points designated on the form. To accept or deny the validity of the claim, the employer may complete and sign the form at the designated point or may use a separate writing, telephone, or other means of telecommunication.

(2) The FROI-1 for applying for payment from a self-insuring employer shall be completed, signed by the employee, and returned to the self-insuring employer. In situations where there is no prescribed form, a notice in writing shall be given in a manner sufficient to inform that a claim for benefits is being presented.

(3) An injured or disabled employee who is a minor (under eighteen years of age) shall file a claim in his or her own name and right. A report of injury signed by such minor employee shall be sufficient to initiate proceedings for compensation and/or benefits.

(4) In the event the injured or disabled employee is unable to complete the first report of injury by reason of physical or mental disability, the report may be completed and filed by the employee's spouse, next friend, the guardian of the employee, or the employee's employer. In claims for death benefits where the dependents are a spouse and one or more minor children, it shall be sufficient for the spouse to make application for benefits on behalf of the spouse and the minor children. In the event a dependent minor child has a guardian of the person other than the spouse of the deceased, such guardian shall execute the report on behalf of such minor child. If there is no spouse surviving, the report on behalf of the dependent minor children, or children who are mentally or physically incapacitated, may be filed by a guardian or next friend of such children.

(5) If the employee is unable to sign the FROI-1 because the employee is in the armed services of the United States, the bureau shall process the claim in the regular manner under section 4123.511 of the Revised Code.

Comment [PW8]: The Armed Services Claim language from rule 4123-5-02 is rescinded and this language is added under the applicable section of this rule.

~~(5)~~ (6) It shall be the duty of every employer to assist injured or disabled employees in the preparation and submission of reports for compensation and/or benefits. In the event that the employer refuses, neglects or unduly delays the completion of a report, the report may be filed without the part pertaining to the employer having been completed. The fact of refusal or neglect should be noted upon the report or with it by way of separate letter.

~~(6)~~ (7) In cases where the death of the employee is not the result of injury or occupational disease, the application for compensation may be made as provided in sections 4123.57 and 4123.60 of the Revised Code.

~~(7)~~ (8) Application for payment of the balance of percentage permanent partial disability compensation, awarded under division (A) of section 4123.57 of the Revised Code prior to the employee's death, shall be made by the injured employee's dependents. The

application may be filed whether the death was related or unrelated to an industrial injury or occupational disease.

(B) Certification by the employer.

(1) An employer shall accept or reject the validity of a claim filed against its risk within the time as required by sections 4123.511 and 4123.84 of the Revised Code and the rules of the industrial commission and bureau of workers' compensation. If the employer fails to comply with the established time limits, the bureau shall take such further action in the claim as provided for by section 4123.511 of the Revised Code and the rules of the industrial commission and the bureau.

(2) If the employer accepts or denies the validity of the claim, the employer may sign the report at the designated point and return the requested information to the bureau, or the bureau may obtain the employer's certification or denial of the claim by a separate writing, by telephone, or by other forms of telecommunication.

If the employer denies the validity of the claim, the employer shall state the reasons for rejecting the validity of the claim.

(3) Certification by the employer in state fund cases shall not be determinative of compensability. Every such claim is subject to administrative review as to compensability.

(4) An employer's certification of a claim may be made by the employer, by an officer of the business entity which is the employer, or by a duly designated representative of the employer. The person certifying a claim for the employer shall indicate in what capacity the person is employed (title). No other person or entity may make such certification. No person may certify his or her own claim, except in cases of a sole proprietor who has obtained coverage as an employee within Chapter 4123. of the Revised Code.

(C) Place and manner of filing applications for benefits.

Any first report of injury shall be accepted for filing in any office of the bureau or industrial commission during working hours, and reports may be filed by mail or reported by telecommunication.

(D) Time limitations within which claims must be filed.

(1) Injury claims applying for compensation and/or benefits shall be in writing or by telecommunication as provided for in division (E) of section 4123.84 of the Revised Code, and shall include the specific part or parts of the body alleged to have been injured, the injured worker's name and address, and the date of injury. Such claims shall be forever barred unless said written notice is filed with the bureau of workers' compensation or the industrial commission within two years from the date when injured, unless the applicable statute of limitations is extended due to the employer's failure to file a report as required by section 4123.28 of the Revised Code. Except as provided in paragraph (D)(3) of this rule, any claim or application for compensation and/or benefits for an injury to any part or parts of the body not specified in the original claim will be barred unless written notice of the additional part or parts of the body claimed to have

been injured is filed by the claimant with the bureau of workers' compensation or the industrial commission within two years of the date when injured.

(2) In self-insuring employers' claims, the two-year time limitation is tolled if the employer has provided treatment by a licensed physician in the employ of the employer or has paid compensation or benefits within the period. "Benefits" means payment by the self-insuring employer to, or on behalf of, an employee for:

(a) A hospital bill;

(b) A medical bill for treatment by a licensed physician, other than a salaried physician in the employ of the self-insuring employer;

(c) An orthopedic or prosthetic device.

(3) The bureau of workers' compensation and the industrial commission have continuing jurisdiction over a claim which meets the requirement of section 4123.84 of the Revised Code, including jurisdiction to award compensation and/or benefits for a condition (or conditions) or disability developing in part or parts of the body not specified pursuant to division (A)(1) of section 4123.84 of the Revised Code, if it is found that the condition (or conditions) or disability was due to and a result of or a residual of the injury to one of the parts of the body set forth in the written notice filed pursuant to division (A)(1) of section 4123.84 of the Revised Code.

(4) Claims for occupational disease must be filed within two years after the disability begins, or within such longer period as does not exceed six months after diagnosis by a licensed physician, as provided in section 4123.85 of the Revised Code, excepting claims enumerated in paragraph (D)(5) of this rule, other than berylliosis, or where the applicable statute of limitations is extended due to the employer's failure to file a report as required by section 4123.28 of the Revised Code. The filing limitation of six months after diagnosis, where it applies, can only lengthen, not shorten, the two-year statute of limitations.

(5) Special statutory provisions (section 4123.68 of the Revised Code) exist as to claims for silicosis, cardiovascular and pulmonary diseases of fire fighters and police officers, coal miners' pneumoconiosis, asbestosis, berylliosis, radiation illness and all other occupational diseases of the respiratory tract resulting from injurious exposures to dust:

(a) Compensation is payable in silicosis, coal miners' pneumoconiosis, cardiovascular and pulmonary disease of fire fighters and police officers and in all other dust caused diseases of the respiratory tract, except berylliosis, only for temporary total or permanent total disability or death and only if such disability and/or death occurs within eight years after the last injurious exposure.

(b) If disability or death is from injurious exposure occurring after January 1, 1976, the eight-year limitation shall not apply.

(c) There must be injurious exposure in this state. In cases of cardiovascular and pulmonary disease of fire fighters and/or police officers, some of this must be after January 1, 1967. In cases of silicosis, asbestosis and coal miners' pneumoconiosis, part of the injurious exposure must be after October 12, 1945.

(d) In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years does not apply.

(e) The above provisions govern asbestosis claims except that the eight-year limitation does not apply.

(f) The above provisions govern berylliosis and radiation claims except that payment of compensation is not restricted to temporary total, permanent total disability and/or death, and that exposure in this state is not required for radiation claims. In radiation claims, where disability began prior to November 2, 1959, the general occupational disease provisions apply.

(g) The above claims, except claims for berylliosis, must be filed within one year after total disability begins or within such longer period as does not exceed six months after diagnosis by a licensed physician. Claims for berylliosis must be filed within the time as provided in paragraph (D)(4) of this rule. If the disability due to the disease began on or after January 1, 1979, or was diagnosed by a licensed physician on or after January 1, 1979, such claims shall be forever barred unless, within two years after the date of disability due to the disease, or within such longer period as does not exceed six months after diagnosis of the occupational disease by a licensed physician, application is made to the industrial commission, the bureau, or to the employer in the event such employer has elected to pay compensation or benefits directly, or the applicable statute of limitations is extended due to the employer's failure to file a report as required by section 4123.28 of the Revised Code.

(6) Death claims, alleging that death is the result of injury, must be filed within two years of death or be forever barred, except as provided in paragraphs (D)(8) and (D)(9) of this rule.

(7) Where the death is due to an occupational disease and death occurred on or after November 2, 1959, the claim must be filed within two years of the death, as provided in section 4123.85 of the Revised Code.

(8) Emergency management claims for injury or death must be filed within one year from the date when injured or from the date of death, or be forever barred. If an injury claim has been filed within the one-year period and the claimant subsequently dies, a death claim must be filed within six months after the death or be forever barred.

(9) Public works relief employees' claims must be filed within two years after the date when injured or the date of death, or be forever barred.

(10) Militia claims, special contract claims and apprentice claims are governed by the general time limits applicable to injury and occupational disease claims, as provided by sections 4123.84 and 4123.85 of the Revised Code.

Effective: 2/10/09

**4123-3-09 Procedures in the processing of applications for benefits.
(Amend)**

(A) Numbering and recording.

(1) Upon receipt, ~~the bureau will assign a claim number to each initial application for benefits shall be assigned by the bureau a claim number and shall be recorded. The bureau shall provide the claim number shall be furnished~~ to the claimant and employer. In cases where a deceased employee has filed, during his or her lifetime, an industrial claim for the injury or disability which is the subject matter of the death claim, the application for death benefits shall be assigned the original claim number.

(2) The claim number should be placed on all documents subsequently filed in each claim and the claim number should be given when inquiry is made concerning each claim.

(B) Initial review and processing of new claims.

Immediately after numbering and recording, all new claim applications, except applications of employees of self-insuring employers, shall be reviewed and processed by the bureau's claims specialists on the question of compensability. "Processing on the question of compensability" means ~~the making of a determination on the validity of the claim as an~~ industrial claim.

(1) Noncontested or undisputed claims.

A "contested or disputed claim," as used herein, is ~~one the validity of which, as an industrial claim, is questioned by where~~ the employer or by the bureau of workers' compensation ~~question the validity of a claim for compensation or benefits~~. No claim shall be regarded as a contested or a disputed claim requiring a formal (public) hearing, solely by reason of incomplete information, unless every effort has been made to complete the record.

(a) If a state fund claim meets the statutory requirements of compensability, the claims specialist shall have authority to approve such claim for payment of medical bills and temporary total disability compensation. The approval of the claim must contain the description of the condition or conditions for which the claim is being allowed and part or parts of the body affected.

(b) In the processing of initial applications in state fund claims, requesting payment of compensation in addition to medical benefits, the claims specialist may approve temporary total disability compensation over a period not to exceed four weeks, without medical proof in the record, provided that the application has been properly completed and signed, certified by the employer and was otherwise noncontroversial. If medical proof was submitted with the initial application, the above limitation shall not apply. Upon approval of the claim the claimant shall be notified in writing that his or her attending physician's report will be necessary for consideration of any additional payment of compensation and an appropriate form shall be enclosed, with the necessary instructions, for the claimant's convenience.

(c) Immediately after the initial processing and execution of orders, claims shall be referred to the proper location for housing, as provided in division (B)(11) of section 4121.121 of the Revised Code.

(2) Contested or disputed claims.

~~(a) Contested or disputed claims as well as claims requiring investigation shall be referred, immediately after the initial review, to the appropriate office of the bureau from which investigation and determination of issues may be made most expeditiously. After an appeal of the bureau's order, the bureau shall refer the contested issue for a hearing before a district hearing officer with notices to the interested parties.~~

Comment [PW9]: This statement deleted; Appeals covered under 4123-3-18.

~~(b) If the bureau or the employer contests the claim application and the claimant is not available for an adjudication due to the claimant's service in the armed services of the United States, the bureau shall continue the matter in accordance with the Servicemembers Civil Relief Act until such time as the claimant is available for adjudication of the claim.~~

Comment [PW10]: The Act was renamed in 2003.

Comment [PW11]: The Armed Services Claim rule is rescinded and the language was placed under the applicable section of this rule.

(3) Applications for death benefits.

Immediately after numbering and recording, all applications for death benefits shall be referred to the appropriate office of the bureau from which investigation and determination of issues may be made most expeditiously. Every effort should be made to complete the investigation within the shortest time possible, depending on the facts and circumstances of each particular case, to enable prompt adjudication of such claims by the bureau.

(4) Contested (disputed) applications for workers' compensation benefits filed by employees of self-insuring employers shall be referred to the industrial commission for a hearing.

(C) Proof.

(1) In every instance the proof shall be of sufficient quantum and probative value to establish the jurisdiction of the bureau to consider the claim and determine the rights of the applicant to an award. "Quantum" means measurable quantity. "Probative" means having a tendency to prove or establish.

(2) Proof may be presented by affidavit, deposition, oral testimony, written statement, document, or other forms.

(3) The burden of proof is upon the claimant (applicant for workers' compensation benefits) to establish each essential element of the claim by preponderance of the evidence. Essential elements shall include, but will not be limited to:

(a) Establishing that the applicant is one of the persons who under the act ~~have~~ has the right to file a claim for workers' compensation benefits;

(b) That the application was filed within the time period as required by law;

(c) That the alleged injury or occupational disease was sustained or contracted in the course of and arising out of employment;

(d) In death claims, that death was the direct and proximate result of an injury sustained or occupational disease contracted in the course of and arising out of employment; the necessary causal relationship between an injury or occupational disease and death may be established by submission of sufficient evidence to show that the injury or occupational disease aggravated or accelerated a pre-existing condition to such an extent that it substantially hastened death;

(e) Any other material issue in the claim, which means a question that must be established in order to determine claimant's right to compensation and/or benefits.

"Preponderance of the evidence" means greater weight of evidence, taking into consideration all the evidence presented. Burden of proof does not necessarily relate to the number of witnesses or quantity of evidence submitted, but to its quality, such as merit, credibility and weight. The obligation of the claimant is to make proof to the reasonable degree of probability. A mere possibility is conjectural, speculative and does not meet the required standard.

(4) The bureau or commission may, at any point in the processing of an application for benefits, require the employee to submit to a physical examination or may refer a claim for investigation.

(5) Procedure on employer's request for medical examination of the claimant by a doctor of employer's choice.

The employer may require a medical examination of the employee as provided in section 4123.651 of the Revised Code under the following circumstances:

(a) Such an examination, if requested, shall be in lieu of any rights under paragraph (C)(5)(b) of this rule and in no event will the claimant be examined on the same issue by a physician of the employer's choice more than one time. The exercise of this ~~exam~~ examination right shall not be allowed to delay the timely payment of benefits or scheduled hearings. Requests for further examinations will be made to the bureau or commission following the provisions of paragraph (C)(5)(b) of this rule. The cost of any examination initiated by the employer shall be paid by the employer including any fee required by the doctor, and the payment of all of the claimant's traveling and meal expenses, in a manner and at the rates as established by the bureau from time to time. If employed, the claimant will also be compensated for any loss of wages arising from the scheduling of an examination.

All reasonable expenses shall be paid by the employer immediately upon receipt of the billing, and the employer shall provide the claimant with a proper form to be completed by the claimant for reimbursement of such expenses.

The employer shall promptly inform the bureau or the commission, as well as the claimant's representative, as to the time and place of the examination, and the questions and information provided to the doctor. A copy of the examination report shall be submitted to the bureau or commission and to the claimant's representative upon the employer's receipt of the report from the doctor.

Emergency treatment does not constitute an examination by the employer for the purposes of this rule. Treatment by a company doctor as the treating physician constitutes an examination for the purposes of this rule. The procedure set forth in paragraph (C)(5)(a) of this rule shall be applicable to claims where the date of injury or the date of disability in occupational disease claims occur on or after August 22, 1986.

(b) If after one medical examination of the claimant under paragraph (C)(5)(a) of this rule, an employer asserts that a medical examination of the claimant by a doctor of the employer's choice is essential in the defense of the claim by the employer, a written request may be filed with the bureau for that purpose. In such request the employer shall state the date of the last examination of the claimant by a doctor of employer's choice on the question pending. If there was no such prior examination, the request must so indicate.

(c) If the claim is pending before the industrial commission or its hearing officers and the question sought to be clarified by such examination is not within the jurisdiction of the bureau (for example: permanent total disability), the request shall be referred, forthwith, to the industrial commission or to the appropriate hearing officer, as the case may be, for further consideration.

(d) If the question sought to be clarified by the requested examination is within the bureau's jurisdiction (for example: temporary total disability in an otherwise undisputed claim, allowance of additional condition), the bureau shall immediately act upon the request.

If, upon a review of the claim file the bureau is of the opinion that the request should be denied for the reason that the claimant has been recently examined by a doctor of the employer's choice, or for any other reason indicating that further examination would not be pertinent to the defense of the claim, based on the facts and circumstances of each particular case, the matter shall be referred, forthwith, to the appropriate district hearing officer for further consideration. In cases of temporary total disability, a medical examination performed within the past thirty days shall be regarded as "recent." If the question involves additional allowance of claim for an additional condition allegedly causally related to the allowed injury or occupational disease, a medical examination performed within the past sixty to ninety days may be regarded as "recent," depending on the nature and type of the condition and/or disability.

(e) All reasonable expenses incurred by the claimant in submitting to such examination, including any travel expense that the claimant may properly incur, shall be paid by the employer immediately upon receipt of the billing. Payment for traveling expenses shall not require an order of the bureau or commission, unless there is a dispute. The employer shall provide the claimant with a proper form to be completed by the claimant for reimbursement for traveling expenses.

In addition, if the request for such examination is filed on or after January 1, 1979, and the claimant sustains lost wages as a result of such examination, the employer shall reimburse the claimant for such lost wages within three weeks from the date of examination. Expenses incurred by the claimant and wages lost by reason of attending such examination are not to be paid in the claim.

(f) The employer shall make arrangements for such examination within fifteen days from the date of receipt of the order of approval. The examination shall be performed ~~not later than~~ within thirty days from the date of the receipt of approval.

The doctor's report shall be filed with the bureau immediately upon its receipt. Failure of the employer to comply with this rule shall not delay further action in the claim, unless it is established that the omission was due to causes beyond the employer's control.

(6) Procedure for obtaining the deposition of an examining physician. Authority to allow ~~the taking of such~~ depositions is within the exclusive jurisdiction of the industrial commission. Any such request, if filed with the bureau, shall be referred, forthwith, to the industrial commission for further consideration.

(D) Hearings and orders issued pursuant thereto.

(1) Unless required by law or by the circumstances of the claim, the claim shall be adjudicated without a formal hearing.

(2) Disputed or contested claims shall be set for a formal (public) hearing on the question of allowance before the district hearing officers. A "disputed or contested claim," as used herein, ~~means a claim the validity of which as an industrial claim is questioned by the employer, the bureau or by the industrial commission is where the~~ employer or the bureau of workers' compensation question the validity of a claim for compensation or benefits. No claim shall be regarded ~~by the bureau~~ as a contested or disputed claim requiring a formal (public) hearing, solely by reason of incomplete information unless every effort has been made to complete the record (see paragraph (F) of this rule).

(3) Upon the request of the industrial commission, the bureau shall assist the district hearing officers in administrative matters preliminary to formal (public) hearings, such as: the setting and publication of dockets, preparation and mailing notices of hearing, assistance in handling requests for continuance of hearing, etc. In addition, the bureau shall make available to each district hearing officer the facilities and assistance of bureau employees, as needed. In all such matters the bureau shall follow the procedural rules of the industrial commission.

(4) If prior to or after a formal hearing it is apparent that additional information is necessary for proper adjudication of a claim, the bureau shall be responsible for securing the necessary information.

(5) The administrator of the bureau of workers' compensation, ~~as representative of the state insurance fund and of the surplus fund~~, or his or her designee, shall be given a reasonable advance notice of all formal hearings affecting the state insurance fund and/or the surplus fund. Such notice shall be in writing, sent by inter-office mail. In emergency hearings such notice may be by telephone in addition to inter-office mail. Time limits applicable to advance notification of other parties under the rules of the commission shall apply herein.

(6) The administrator or his or her designee may appear at such hearings to represent the interest of the state insurance fund and/or the surplus fund, ~~as the case may be~~.

(7) The bureau shall make payment on orders of the commission, and district or staff hearing officers in accordance with law and rules of the bureau and the industrial commission.

(8) If the administrator or his or her designee is of the opinion that an emergency exists which requires an immediate hearing of a claim, he or she may request an emergency hearing. "Emergency," as used herein, means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Such request shall be made in accordance with the rule of the industrial commission on emergency hearings (rule 4121-3-30 of the Administrative Code).

(E) Representation of claimants and employers before the bureau. Representation of claimants and employers before the bureau is a matter of individual free choice. The bureau does not require representation nor does it prohibit it. No one other than an attorney at law, authorized to practice in the state of Ohio, shall be permitted to represent claimants for a fee before the bureau.

(F) Procedure governing the appearances of a claimant, employer or their representatives before the bureau.

(1) ~~A~~ If the bureau or the parties believe that clarification of issues will facilitate the processing of the claim, the claimant, ~~an~~ employer, and/or their duly authorized representatives (see rule 4123-3-22 of the Administrative Code) shall be given an opportunity to be heard by the bureau (service office director, section director or their designee) on ~~any question~~ questions pertaining to ~~matters~~ the claim pending before the bureau ~~in a respective claim, if the bureau or the parties feel that this shall facilitate the processing of the claim by clarification of issues involved.~~

(2) The parties may appear before the bureau together, at the same time, or separately, at different times, as circumstances may require; they may choose to be or not to be represented; a duly authorized representative may appear on behalf of a party, without the party being present.

(3) Evidence may be submitted in writing or offered orally. Oral statements shall be reduced to writing by the bureau's authorized personnel.

(4) The new evidence shall be made a part of the claim file to be considered by the bureau when the determination is made on the issue pending before the bureau.

Effective: 2/10/09



Bureau of Workers' Compensation

Governor **Ted Strickland**
 Administrator **Marsha P. Ryan**

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02/06/09 & 02/23/09 Email Recommendations for changes to the draft Chapter 5 Rules : sent to Alliance for Justice; OSBA Workers' Compensation Committee and Ohio Self Insured Association.

Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution
4123-5-02 – Armed Services Claims (Rescinded)	Do we still need this rule; it has not been changed since 1967. Can this be combined into another rule? (Internal feedback – Tina K./Senior Team)	Rule is still necessary.	Rule was rescinded and appropriate sections placed under existing rules 4123-3-08(A)(5) and 4123-3-09(B)(2)	n/a
4123-3-08(A)(5) – Preparation and filing of applications for compensation and/or benefits	No feedback			
4123-3-09(B)(2) – Procedures in the processing of applications for benefits	No feedback			

Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution
4123-5-11 – Employers reports much be signed by officer or person in employ of employer	No feedback			
4123-5-13 – Funeral Expenses; what constitutes amount to e paid	No feedback			
4123-5-18 – Medical proof required for payment of compensation	The rules have never required the filing of a specific form, see 4123-5-18(D), which is now inconsistent with WC philosophy that this is a remedial statute and should not be frustrated by technicalities. (Phil Fulton and Bob Kendis)	Discussed adding wording that would not limit the use of the specific form per se; although the C-84 form is the form used specifically to request temporary total compensation.	Added the following wording: “or an equivalent form or document containing the information on the C-84 form”.	n/a
4123-5-20 – Payment of compensation when advancements are made during period of disability	No feedback			
4123-5-21 – Abatement of Claims	No feedback			

04/01/2009

Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rule 4123-6-08

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: O.R.C. 4121.441(A)(8); O.R.C. 4123.66

2. The rule achieves an Ohio specific public policy goal.

What goal(s): The rule adopts an updated discounted pricing fee schedule for workers' compensation medical services in accordance with O.R.C. 4121.441(A)(8) and *Ohio Hosp. Assn. v. Ohio Bur. of Workers' Comp.*, Franklin App. No. 06AP-471, 2007-Ohio-1499.

3. Existing federal regulation alone does not adequately regulate the subject matter.

4. The rule is effective, consistent and efficient.

5. The rule is not duplicative of rules already in existence.

6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. The rule has been reviewed for unintended negative consequences.

8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: The proposed fee schedule was placed on www.ohiobwc.com on May 14, 2009 and stakeholders were given until May 22, 2009 to submit comments.

9. The rule was reviewed for clarity and for easy comprehension.

10. The rule promotes transparency and predictability of regulatory activity.

11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? _____

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

BWC Board of Directors
Executive Summary
BWC Provider Fee Schedule Rule

Introduction

Chapter 4123-6 of the Administrative Code contains BWC rules implementing the Health Partnership Program (HPP) for state fund employers, including rules relating to the adoption of a provider fee schedule. BWC initially enacted the bulk of the Chapter 4123-6 HPP operational rules (Ohio Administrative Code 4123-6-01 to 4123-6-19), including OAC 4123-6-08, the provider fee schedule rule, in February 1996.

Background Law

R.C. 4121.441(A)(8) provides that the Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to injured workers, including but not limited to discounted pricing for medical services.

Pursuant to this statute, BWC adopted OAC 4123-6-08. Since its promulgation in February 1996, OAC 4123-6-08 has provided that “. . . the bureau shall develop, maintain, and publish a provider fee schedule for the various types of billing codes. The fee schedules shall be developed with provider and employer input.”

However, prior to the 10th District Court of Appeals decision in *Ohio Hosp. Assn. v. Ohio Bur. of Workers' Comp.*, Franklin App. No. 06AP-471, 2007-Ohio-1499, BWC adopted the provider fee schedule itself in the manner provided for in O.R.C. 4121.32(D), which grants BWC authority to “establish, adopt, and implement policy guidelines and bases for decisions involving reimbursement issues including, but not limited to . . . reimbursement fees . . . set forth in a reimbursement manual and provider bulletins.”

Pursuant to the Court of Appeals' decision in the *OHA* case, BWC is now required to adopt changes to its provider fee schedule via the O.R.C. Chapter 119 rulemaking process. BWC has undergone a systematic revision of its provider fee schedule, which has not been revised since 2004, and now proposes to adopt the newly revised provider fee schedule as an Appendix to OAC 4123-6-08.

Rule Changes

4123-6-08 Bureau fee schedule.

BWC is proposing to amend current OAC 4123-6-08 to include the updated provider fee schedule itself as an appendix to the rule. The proposed fee schedule updates would become effective September 21, 2009.

4123-6-08 Bureau fee schedule.

(A) Pursuant to division (A)(8) of section 4121.441 of the Revised Code, the administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall develop, maintain, and publish a provider fee schedule for the various types of billing codes. The administrator hereby adopts the fee schedule indicated in the attached appendix A, developed with provider and employer input effective September 21, 2009.

(B) Whether the MCO has elected to retain a provider panel or not, an MCO may contract with providers. Every provider contract shall describe the method of payment to the providers. The MCO shall provide an MCO fee schedule to each provider that contracts with the MCO. The MCO fee schedule may be at different rates than the bureau fee schedule. The MCO shall make the MCO fee schedule available to the bureau as part of its application for certification. The bureau shall maintain the MCO fee schedule as proprietary information.

Appendix A

BUREAU OF WORKERS' COMPENSATION

PROVIDER FEE SCHEDULE

EFFECTIVE SEPTEMBER 21, 2009

Effective: 9/21/2009

R.C. 119.032 review dates: 3/1/2009

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05

Rule Amplifies: 4121.121, 4121.44, 4121.441, 4123.66

Prior Effective Dates: 2/16/96; 1/1/01

BWC 2009 Proposed Professional Provider and Medical Services Fee Schedule Update

Medical Service Enhancements

Prompt, effective medical care makes a big difference for those injured on the job. It is often the key to a quicker recovery and timely return-to-work and quality of life for injured workers. Thus, maintaining a network of dependable medical and vocational rehabilitation service providers ensures injured workers get the prompt care they need. It also ensures access to quality, cost-effective service. Access for injured workers means the availability of appropriate treatment, which facilitates faster recovery and a prompt, safe return to work. For employers, it also means the availability of appropriate, cost-effective treatment provided on the basis of medical necessity.

The Medical Services Division has focused on improving its core medical services functions. Our goals are as follows: enhance our medical provider network, establish a better benefits plan, institute an updated and competitive provider fee schedule, improve our managed care processes, and establish excellent medical bill payment services.

Professional Provider Fee Schedule

Introduction and Methodology

As stated, implementing a sound and effective provider fee schedule is a critical component of the Medical Services Division's goals. The Ohio Bureau of Workers Compensation reimburses approximately 70,000 providers for medical services rendered to Ohio's injured workers. An appropriate fee schedule is integral to maintaining an effective and comprehensive network of physicians, specialists, and support services and supplies. An equitable and competitive fee for the right medical service is essential to maintain a quality provider network across the wide range of necessary provider disciplines.

The BWC medical fee schedule was revised and adopted by the BWC Board in 2008. Subsequent to the completion of the Chapter 119 rulemaking process the revised schedule was implemented in February 2009.

The Medical Services Division, pursuant to the yearly fee schedule maintenance schedule undertook a review of the new fee schedule with the goal of implementing updated Medicare base data used in BWC's calculations, and identifying corrections to benefit coverage or pricing. The proposed updates to the currently adopted 2009 BWC fee schedule resulted from the following steps:

- A.** The evaluation of the 2009 Ohio Fee Schedule against the 2009 coding publication for the Federal Center for Medicare and Medicaid Services' 2009 fee reimbursements publications;
- B.** A review of the current 2009 Professional Provider and Medical Services fee schedule as adopted to identify benefit coverage errors and/or policy changes.

Calculating Provider Fees Per the CPT codes

BWC currently utilizes the Resource-Based Relative Value Scale (RBRVS) developed in 1992, by the Federal Center for Medicare and Medicaid Services for professional reimbursements associated with the CPT® codes. Each year Medicare updates its CPT fees under the RBRVS approach. The fee schedule includes services such as office visits, hospital care, procedures, etc. Medicare fees are composed of two component parts: the relative value unit (RVU) and a conversion factor (CF). The foundation of RBRVS is a strong, empirical research methodology. BWC has utilized the RBRVS, at least, since 1997.

An individual RVU is calculated for each procedure by looking at the associated relative work and costs of services. RVUs allow comparison of apples to oranges (i.e., surgery to primary care visits) and can relatively and appropriately set the allowable payment for any service in any specialty.¹ Each specific CPT code for a medical service is assigned a RVU based on the degree of service intensity the procedure requires. Further, the RVUs reflect costs for overhead and malpractice. Finally, there is a regional cost adjustment. The regional cost adjustment is called the Geographical Practice Cost Index (GPCI). There is a separate GPCI for work expended, overhead, and malpractice.

The fee, or the amount of payment, for service, is a function of the multiplication of the service's designated RVU by the CF. The CF is the dollar amount selected for that category of service. While the BWC adopts Medicare's RVUs for relevant CPT Codes, it uses its own CF to set the final fee for service.

The following table provides BWC's current CF.

Service Grouping	Current	% over Medicare
Radiology	\$ 51.00	134%
Physical Medicine	\$ 51.00	134%
General Medicine	\$ 51.00	134%
Surgery (*)	\$ 79.10	208%
Pathology (**)	See Below	
Anesthesia (***)	\$ 42.50	213%

* Injections proposed to be paid at \$50.00 CF
**Pathology is currently paid at 125% of Medicare Fee Schedule
*** Anesthesia is currently paid at \$42.50 time the number of base units plus \$42.50 per 15 minutes
Medicare has a single CF of \$36.000 Medicare's Anesthesia base rate is \$19.97

Ohio Bureau of Workers' Compensation

¹ Johnson and Newton, Resource-Based Relative Value Units: A Primer for Academic Family Physicians, Department of Family Medicine, University of North Carolina (2002)

The following table demonstrates the payment calculation for two varied services – a simple laceration repair and total knee replacement:

Calculating Fee Schedule for a CPT code

Fee Schedule	12001 - simple laceration repair			27447 - total knee replacement		
	RVU	GPCI	Product	RVU	GPCI	Product
Work	1.7200	1.000	1.720	23.0400	1.000	23.040
Practice Expense	1.8600	0.927	1.724	13.5800	0.927	12.589
Malpractice	0.1500	1.232	0.185	3.8000	1.232	4.682
Sum of Products			3.62			40.31
Times Conversion Factor			\$79.10			\$79.10
Reimbursement Rate (Fee Schedule)			\$287.06			\$3,188.54

Ohio Bureau of Workers' Compensation

Calculating Provider Fees Utilizing HCPCS Codes

The 3600 HCPCS codes mentioned earlier includes services such as durable medical equipment, supplies, medications, vision services, prosthetics and others. Medicare annually evaluates all of the services and supplies listed under those codes and establish a fee for each of those services. The BWC has, at least since 1997, utilized the Medicare set fees with a twenty percent (20%) addition.

An example of a HCPCS calculation is as follows: calculation for a: Range of Motion Device (rental)

$$\begin{array}{rclclcl} \text{Medicare Fee} & + & 20\% & = & \text{Provider Fee} \\ \$22.00 & + & \$4.40 & = & \$26.00 \end{array}$$

Calculating Provider Fees Utilizing 170 Local Codes

The 170 Local codes include services such as vocational rehabilitation services, exercise equipment, supplies, mileage reimbursement, and others. Local codes have been devised to assign a coding scheme for services not included in the Medicare HCPCS manual. The BWC performs market pricing to establish the recommended fee schedule for professional services and products placed under these codes.

2009 Proposed Fee Schedule Updates Recommendations

Medical Services recommends that BWC adopt Medicare's 2009 RVUs for all relevant CPT codes. In 2009, Medicare's adjusted RVUs for a number of the CPT codes as well as modified the Ohio GPCI for all codes. The GPCI increased for work expended and malpractice, but

decreased for overhead. Those changes have resulted in base line increase in the values of approximately 70% of the covered CPT codes, and a corresponding decrease in 30% of the covered CPT codes.

Medical Services further recommends the adoption of Medicare's 2009 HCPCS fees with a twenty percent (20%) addition. The 2009 HCPCS were marginally adjusted from the 2008 Medicare fees.

Medical services further recommend the updating of the 2009 BWC fee schedule to correct selected services codes' benefit coverage status due to an initial incorrect designation or policy change. Accordingly, this evaluation of the fee schedule codes schedule resulted in a status change from "non-covered" to "covered" for: 112 CPT codes, 104 HCPCS, and 10 local codes.

Projected Impacts and Outcomes

The financial impact to the state fund is minimal and estimated at less than \$1 million or an increase of about .4% over the current 2009 implemented Professional Provider and Medical Services fee schedule.

OHIO BWC 2009 PROFESSIONAL FEE SCHEDULE PROPOSAL

Medical Services Division
Freddie Johnson, Director, Managed Care Services
Jean Graff, Medical Policy Analyst
May 28, 2009

Introduction and Guiding Principles

- Legal Requirement for Fee Schedule Rule
- Proposed Time-line for implementation
- Guiding Principle:
Ensure access to high-quality medical care by establishing an appropriate Benefit plan and Terms of service with competitive fee schedule which, in turn, enhances medical provider network

Fee Schedule Update Methodology

- Applied Medicare's 2009 Rates to the following:
 - Current Procedural Terminology (CPT©) - (10,000)
 - Healthcare Common Procedural Coding System (HCPCS) - (3,600)
- Addressed unintentional errors on the 2009 BWC Schedule
- Modified coverage status for selected codes
- Incorporated relevant reimbursement billing modifiers into the schedule

Proposed CPT© Revisions

Relative Value Units (RVU)

- RVUs updated to Medicare's 2009 Unadjusted RVUs
 - The RVU for each CPT code includes three components:
 - Work - level of difficulty to provide the service
 - Practice Expense - overhead such as staff, rent, utilities
 - Malpractice – level of risk associated with the service
 - Geographical Practice Cost Index (GPCI)

2008 GPCI	2009 GPCI
Work—0.992	Work—1.00
Practice Expense—0.930	Practice Expense—0.927
Malpractice—1.097	Malpractice—1.232

Proposed CPT© Revisions

Conversion Factor (CF)

- Conversion Factor (CF)
 - BWC's assigned price for each category of service

CPT Code 29874 Arthroscopic knee surgery (scope) with removal of loose body

	RVU	x	GPCI	x	CF	= Provider Fee
2008-	13.45027	x	0.9651	x	79.10	= \$1026.79
2009-	13.56602	x	1.0530	x	79.10	= \$1129.94

- Guiding Principle:
 - Ensure **access to high-quality** medical care
 - Medical Management / Return to Work
 - Competitive fee schedule which enhances medical provider network

Proposed CPT© Revisions

Conversion Factors

Current Fee Schedule

2009 Update

Service Grouping	CF	Pct of Medicare	CF	Pct of Medicare
Radiology	\$51.00	134%	\$51.00	141%
Physical Medicine	\$51.00	134%	\$51.00	141%
General Medicine	\$51.00	134%	\$51.00	141%
Surgery (*)	\$79.10	208%	\$79.10	219%
Pathology	Fee Schedule	125%	Fee Schedule	125%
Anesthesia (**)	\$42.50	213%	\$42.50	201%

** Injections paid at \$51.00 CF

*** Anesthesia is currently paid at \$42.50 time the number of base units plus \$42.50 per 15 minutes/2008 Medicare's Anesthesia is base rate is \$19.97. 2009 Medicare's Anesthesia is base rate is \$21.11

HCPCS and Local Codes Revisions

- Adjust current HCPCS to reflect 2009 Medicare Schedule
 - Medicare's values will be increased by 20%
- Local Codes
 - Decrease Mileage from .51 cents per mile to 0.45 cents per mile
 - Maintain all other local fees

Impacts and Outcomes

- **Medical Costs Impact**
 - **An estimated .2% increase above the estimated current fee schedule impact**
 - Estimated dollar figure is \$800,000.00
- **Place BWC on same schedule as national reimbursement coding methodologies**
 - Maintain a competitive provider and medical services reimbursement rate
- **Provided further transparency to BWC billing and reimbursement methodologies**
 - Improve consistency of reimbursement across providers

Thank You

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Chapter 4123-14 Noncomplying Employers

April 2009

Rule Review

1. The rule is needed to implement an underlying statute.
Citation: R.C. 4123.35 Payment of Premiums by Employers
2. The rule achieves an Ohio specific public policy goal.
What goal(s): The rules provide criteria and guidance on how BWC will pursue collection of premiums from noncomplying employers
3. Existing federal regulation alone does not adequately regulate the subject matter.
4. The rule is effective, consistent and efficient.
5. The rule is not duplicative of rules already in existence.
OAC 4123-3-14 is recommended for deletion since it is a duplicate of this rule
6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.
7. The rule has been reviewed for unintended negative consequences.
8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.
Explain: Representatives of Third Party Administrators and the workers' compensation section of the Ohio State Bar Association were sent recommended changes and asked to provide comments. One response was received. No changes were made to the draft rule as a result of that response.
9. The rule was reviewed for clarity and for easy comprehension.
10. The rule promotes transparency and predictability of regulatory activity.
11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.
12. The rule is not unnecessarily burdensome or costly to those affected by rule.
If so, how does the need for the rule outweigh burden and cost? N/A
13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

BWC Board of Directors
Executive Summary
Noncomplying Employers Rules
Chapter 4123-14
April 2009

Introduction

Rule 4123-14 defines noncomplying employers as those who fail to pay premiums and sets forth procedures on how BWC will pursue collection of such premiums from noncomplying employers.

As part of the current Chapter 4123-14 five year rule review process, this chapter has been thoroughly reviewed and changes have been proposed. There are six rules in Chapter 4123-14 dealing with how BWC will notify a noncomplying employer of their failure to pay, how BWC will make an assessment of the premium due based on information in its possession, and the process for placing liens on an employer's real and personal property, and recording such liens with the county recorder. This rule also identifies appeal options available to an employer seeking a waiver of penalties and the employer's right to an adjudication hearing to determine if the employer has demonstrated "good cause" for such a waiver.

Background Law

Ohio Revised Code 4123.35 defines an employer for the purposes of workers' compensation coverage in Ohio and sets forth how an employer is to pay premiums for workers' compensation coverage.

Ohio Revised Code 4123.32 directs the Administrator to develop rules regarding noncomplying employers.

Pursuant to these statutes, BWC has adopted Ohio Administrative Code Chapter 4123-14, "Noncomplying Employers." The rules in this chapter are scheduled for five year rule review as mandated by Ohio Revised Code 119.032. BWC owns and maintains the revision and update process for this section of the OAC.

Changes were also drafted in response to HB100 which mandated BWC to lapse employers for non-payment of non-premium debt in excess of \$1,000.

Proposed Changes

The major substantive changes proposed for the noncomplying employers' rules pursuant to the five year rule review:

- Clarification and expansion on the definition of noncomplying employers
- Updating rule to reflect mandate from HB 100 on lapsing employers who fail to pay non-premium obligations
- Updating rule to reflect current BWC procedures for the collection of premiums from noncomplying employers

- Updating rule to reflect current BWC procedures for adjudicating employers' requests for relief
- Elimination of OAC 4123-3-14 "Procedure in the original adjudication of noncomplying employers' claims" (this chapter is a duplicate of 4123-14-04)

Stakeholder Involvement

The proposed rule changes were disseminated to external interested parties that included 38 Third Party Administrator representatives and the chair of the workers' compensation section of the Ohio State Bar Association. An announcement was made at a recent BWC event with TPAs in attendance, notifying attendees that proposed changes to Chapter 14 of the OAC would be available for reviewing and comment. Only one response was received from an external stakeholder. That response was evaluated by the Subject Matter Specialists for impact. No changes were made to the draft document as a result of that response.

**4123-14-01 Noncomplying employers within the meaning of the law.
(TO RESCIND)**

An employer, as defined in division (B) of section 4123.01 of the Revised Code, who either fails to establish industrial coverage and make payments of premiums to the state insurance fund, as required by Chapter 4123. of the Revised Code and the rules of the industrial commission and the bureau of workers' compensation, or fails to comply with the requirements for self-insurance under section 4123.35 of the Revised Code and the rules of the industrial commission or bureau of workers' compensation, shall be regarded as a noncomplying employer.

4123-14-01 Noncomplying employers within the meaning of the law. (NEW)

(A) An employer, as defined in division (B) of section 4123.01 of the Revised Code, who either fails to establish or maintain industrial coverage, or fails to make payments of premiums to the state insurance fund, as required by chapter 4123. of the Revised Code and the rules of the industrial commission and the bureau of workers' compensation, or fails to comply with the requirements for self-insurance under section 4123.35 of the Revised Code and the rules of the industrial commission or bureau of workers' compensation, shall be regarded as a noncomplying employer.

(B) An employer, as defined in division (B) of section 4213.01 of the Revised Code who, after a final adjudication, has failed to pay an obligation, billing, account or assessment that is greater than one thousand dollar on or before its due date, shall be regarded as a noncomplying employer.

(1) For purposes of this rule, due date shall be defined as sixty days after invoice date of an obligation, billing, account or assessment that is greater than one thousand dollar if no administrative appeal as permitted by law is filed; or sixty days following an administrative or court order that has become final.

(2) Coverage will lapse if obligation, billing, account or assessment that is greater than one thousand dollar remains unpaid as of the due date as defined in paragraph (B)(1) of this rule.

(C) An employer who is determined to be a noncomplying employer under paragraph (B) of this rule shall have coverage reinstated as date of payment of an obligation, billing, account or assessment that is greater than one thousand dollar from which no appeal or protest is filed.

(D) An employer who is determined to be a noncomplying employer under paragraph (B) of this rule and has filed a timely protest or appeal, shall have their coverage reinstated and noncompliance period vacated, pending final administrative adjudication of that protest or appeal.

4123-14-02 Procedures for the collection of premiums from noncomplying employers. (TO AMEND)

(A) Whenever the bureau of workers' compensation finds that an employer who was subject to division (B)(2) of section 4123.01 of the Revised Code failed to comply with the law in matters of industrial coverage, the bureau shall ~~forthwith~~ notify ~~said-~~ the employer in writing of such a finding. The notice shall outline the period(s) of time during which the employer was an amenable employer, and ~~further, it~~ shall specify that the employer has twenty days from the ~~receipt~~ service of the notice to furnish the bureau of workers' compensation with the appropriate payroll report and pay the applicable premium or premium security deposit, as required by law.

~~(B) Where the employer is not a resident of the state of Ohio, or conceals its whereabouts or its whereabouts are unknown and cannot be ascertained, and no forwarding address can be found, or where the employer is deceased, the service of process shall be made in accordance with sections 4123.751 to 4123.756 of the Revised Code.~~

~~(C)~~ (B) If the employer does not furnish the required payroll report and does not pay ~~to the state insurance fund~~ the applicable premium and/or the premium security deposit within the twenty-day period referred to in paragraph (A) of this rule, the bureau of workers' compensation or its authorized agent shall immediately take the following action:

(1) Make an assessment of the premium due from the employer, in accordance with sections 4123.32 and 4123.37 of the Revised Code ~~and rule 4123-19-07 of the Administrative Code~~. The assessment shall be based on such information as may be in the possession of the bureau of workers' compensation.

~~(2) Under the authority of section 4123.78 of the Revised Code, file with the county recorder of any counties in which such employer's property may be located a certificate of the amount of premium(s) due from such an employer and the amount so due shall be a lien from the date of such filing against the real and personal property of the employer within the county in which such certificate is filed.~~

~~(D)~~ (C) The bureau of workers' compensation or its authorized agent shall ~~forthwith~~ give ~~to the employer~~ a written notice of any action taken. The notice shall be mailed to the employer at its residence or usual place of business by certified mail with return receipt requested ~~or as provided in paragraph (B) of this rule~~. ~~Furthermore, the~~ The notice shall inform the employer that unless it files with the bureau of workers' compensation, within twenty days after receipt of said notice, a petition for reassessment in writing, verified under oath by said employer, or its authorized agent having knowledge of the facts, setting forth in detail the items of the assessment objected to and the reason(s) for the objection, such assessment shall become final

and the amount thereof shall be due and payable from the employer so assessed to the state insurance fund.

- (D) The bureau of workers' compensation or its authorized agent, under the authority of section 4123.78 of the Revised Code, shall file with the county recorder of any counties in which such employer's property may be located a certificate of the amount of premium(s) due from such an employer and the amount so due shall be a lien from the date of such filing against the real and personal property of the employer within the county in which such certificate is filed.
- (E) In the event a petition objecting to the assessment is duly filed by the employer, the matter shall be referred to the administrator of workers' compensation, who may refer the matter to be set for a hearing before the bureau of workers' compensation adjudicating committee. The notice of hearing shall be mailed to the petitioner by certified mail and to its representative, setting forth the date, time and place of the hearing. It will be mailed to the parties, as indicated above, not less than fourteen days before the date of such a hearing. In justifiable cases an emergency hearing may be arranged.
- (F) A copy of the finding and order of the administrator shall be mailed by certified mail to the party assessed and by regular mail to the representative of such a party.
- (G) If it is the order of the administrator that the employer pay the assessment, payment shall become due ten days after the notice of the finding and order of the administrator was mailed to such employer.
- (H) The employer has the right to appeal the decision of the administrator to the court of common pleas of Franklin county upon the execution of a bond to the state in double the amount due and ordered paid by the bureau, upon the condition that the employer will pay any judgment and costs rendered against it for the premium(s), as provided in section 4123.37 of the Revised Code.
- (I) When no petition objecting to the assessment is filed or when a finding is made affirming or modifying such an assessment after hearing, a certified copy of the assessment, as affirmed or modified, shall be filed by the bureau of workers' compensation, not later than twenty days from the date the order has become final, with the clerk of the common pleas court in any county in which the employer has property or in which the employer has a place of business, for the purpose of obtaining a judgment for the state against the employer in the amount shown on the assessment. As soon as the judgment is rendered, proper action shall be taken to levy execution on said judgment.
- (J) However, an assessment or judgment, as outlined in the preceding paragraphs of this rule, shall not be a bar to the adjustment of the employer's account upon the employer furnishing his payroll records to the bureau.

- (K) In addition to the procedures outlined in paragraphs (A) to (I) of this rule, the administrator of workers' compensation shall, in justifiable cases, certify the matter to the attorney general's office with a request that the employer be enjoined from further operation in accordance with section 4123.79 of the Revised Code and/or that criminal proceedings be instituted against the employer for penalties under division (C) of section 4123.99 of the Revised Code. Furthermore, in cases where the employer failed to furnish to the bureau of workers' compensation the annual payroll report and other related information required by section 4123.26 of the Revised Code, a civil action shall be brought against such employer in the name of the state to collect the penalty, as provided in that section.
- (L) For counties and public employer taxing districts, the bureau shall keep an individual account showing the amount of money paid into the public insurance fund and the amount of losses incurred against the fund. When any such employer defaults in the payment of sums required to be contributed to such fund or any official fails to perform any act required to be performed in reference to the making of payments, the bureau shall institute the proper proceedings in the court to compel such payment.

**4123-14-03 Requests for waiver of a default in the payment of premium, for approval of the original industrial coverage retroactively, and for abatement of penalties.
(NO CHANGE)**

- (A) The administrator of workers' compensation, for good cause shown, may:
- (1) Waive a default in the payment of premium by an employer whose industrial coverage has lapsed, if such a default is of less than sixty days duration; if such a waiver is granted, industrial coverage shall be reinstated retroactively;
 - (2) Approve the original industrial coverage to take effect retroactively;
 - (3) Abate penalties imposed on employers for failure to comply with the Ohio workers' compensation statute.
- (B) The term "good cause," as used in paragraph (A)(1) of this rule, means a substantial reason, one that affords a legal justification or a legal excuse.
- (C) Such requests shall be in writing. They shall be properly signed in handwriting by the employer concerned or by its duly authorized representative. The reason(s) for the relief sought shall be fully explained. Unsigned requests shall be held in abeyance until they are properly completed, and the applicant shall be notified accordingly.
- (D) The administrator may refer such requests to the adjudicating committee, established by the administrator of workers' compensation, for further consideration and for the determination of the issue(s) raised.

4123-14-04 Procedures to recover from a noncomplying employer the amount of money paid out of the state insurance fund for an industrial injury, occupational disease and/or death. (TO AMEND)

- (A) Upon the filing of an industrial claim, naming a noncomplying employer as the employer, ~~and as soon as the claim has been numbered and recorded by the bureau of workers' compensation,~~ the bureau shall prepare and, ~~by certified mail,~~ file for record in the office of the county recorder in the counties where the employer's property is located, if known, or in the county (or counties) where the employer's business is located, an affidavit showing the date on which the application for compensation and/or benefits was filed, the name and address of the employer against whom it was filed, and the fact that said employer has not complied with section 4123.35 of the Revised Code. A copy of the application for compensation and/or benefits shall be filed with the affidavit. The affidavit shall constitute a lien on employer's real property and tangible personal property within the county where it was filed.
- (B) The bureau shall notify the employer, within the shortest time possible, of the filing of the application, which notice shall be mailed ~~by certified mail~~. Such notice shall be accompanied by a copy of the application and a copy of the affidavit, as described in paragraph (A) of this rule, and shall advise the employer that unless it files a timely answer to the application, ~~as required by rules 4121-03-14 and 4123-03-14 of the Administrative Code,~~ the claim shall be adjudicated upon the application that has been filed.
- (C) The answer of the employer shall be verified by the employer, or the employer's agent or attorney. Upon filing of such answer the bureau shall immediately mail a copy of the answer to the employee. If the employee is represented, a copy shall be mailed to the representative.
- ~~(C)~~(D) The lien on employer's property, as described in paragraph (A) of this rule, shall be cancelled under the following circumstances:
- (1) The employer has paid the amount of all awards made by the commission and/or the bureau;
 - (2) There was a final order of disallowance of claim(s);
 - (3) The employer has filed a bond or other security in such an amount and with such a surety as the bureau approves, conditioned on the employer's payment of all awards made by the commission and/or the bureau. The bureau may, in its discretion, grant a partial release of the lien, should this be necessary to facilitate the conduct of the employer's business, provided a sufficient security remains to pay any award that may be made in the claim or claims.

(4) Settlement of employer's liability as provided in rule 4123-14-05 of the Administrative Code.

(5) The bureau, industrial commission, or court has determined that the employer subject to the lien is not the employer of record in the claim.

~~(D)~~(E) In all cases of employer's failure to pay the award(s) of compensation and/or benefits, as approved by the commission and/or the bureau, or to furnish a satisfactory bond within ten days after notification of such award(s), payment of the award(s) from the surplus fund and the recovery of the monies so paid by the bureau shall be in accordance with section 4123.75 of the Revised Code.

~~(E)~~(F) The award(s) of compensation and/or benefits, referred to in paragraph (D) of this rule, shall constitute a liquidated claim for damages against the noncomplying employer. The bureau shall certify the record to the attorney general to institute a civil action against the employer for collection of the award(s). Such action may be joined with the action to recover premium(s) due from such employer.

**4123-14-05 Settlement of liability of a noncomplying employer.
(TO AMEND)**

(A) A noncomplying employer may apply to the administrator of workers' compensation for settlement of its liability to the state insurance fund. The request shall:

- (1) Be in writing and properly signed in handwriting by the employer concerned or by its duly authorized representative. Unsigned requests shall be held in abeyance until properly completed, and the applicant shall be notified accordingly;
- (2) Clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable;
- (3) Include, but not be limited to, the following information:
 - (a) The size of employer's business - number of employees;
 - (b) The location of the business (Ohio, other states, etc.);
 - (c) The length of time the employer has been in business;
 - (d) The nature and type of employer's business for the past five years;
 - (e) A copy of the employer's federal and state income tax return for the past three years;

- (f) A notarized financial statement of current assets and liabilities;
 - (g) A sworn statement to explain the reason for noncompliance with the "Ohio Workers' Compensation Act";
 - (h) The amount of the requested settlement;
 - (i) Is the employer in business at the present time and complying with the "Ohio Workers' Compensation Act."
- (B) The administrator may refer the request to the law section of the bureau of workers' compensation for review, preparation of memorandum, and presentation to the adjudicating committee for approval or disapproval of the offer of settlement. The employer's past history with the bureau, if any, as reflected by the records of the bureau or commission, shall be checked and verified. If additional information is needed for proper disposition of the case, the matter may be referred for investigation. In justifiable cases an independent financial statement and employer's credit rating may be obtained.
- (C) The adjudicating committee may accept the offer of settlement if it finds from a preponderance of the evidence that such a settlement shall be:
- (1) In the best interest of the state insurance fund; or
 - (2) In the best interest of the employees of the employer concerned; or
 - (3) That it will be beneficial to the general welfare of the community; or
 - (4) That it will best serve any other public purpose.

The decision of the adjudicating committee shall be reduced to writing and shall be mailed forthwith to all interested parties. [The bureau may structure the payment of settlement with the employer for a period not exceeding twenty-four months. Interest charges for the structured settlement shall be determined in accordance with section 131.02 of the Revised Code.](#)

**4123-14-06 Bureau of workers' compensation adjudicating committee.
(TO AMEND)**

- (A) The administrator of the bureau of workers' compensation may delegate the authority granted to the administrator under Chapters 4121., 4123., and 4131. of the Revised Code and Chapter 4123 of the Administrative Code for determining employer premium, assessment, or penalty obligations or liabilities, eligibility for alternative premium plans or discount programs, or other employer-related disputes or issues as may be authorized under the workers' compensation statutes and rules. For this

purpose, the administrator may appoint an adjudicating committee to provide employers with hearings on such matters referred to the committee.

~~(1) An employer shall file with the bureau a request, protest, or petition of a premium, assessment, or penalty obligation or liability, or an application for an alternative premium plan or discount program within the time limit established by the appropriate section of the Revised Code or rule of the Administrative Code for such matter.~~

(1) An employer shall file with the bureau a request for a hearing with the adjudication committee only on a bureau approved form. The form may be filed with the adjudicating committee only after the request, protest, petition, or application has been reviewed by the appropriate bureau business unit and only after the bureau's business unit has conveyed to the employer in writing the bureau's initial decision regarding the employer's request, protest, petition, or application.

~~(2) The bureau shall notify the employer in writing of its determination on the employer's request, protest, petition, or application.~~

~~(3)~~(2) Unless a different time is provided by the Revised Code or the Administrative Code for such matter, an employer shall file a protest or appeal of the bureau's decision on the request, protest, petition, or application within two years of receipt of the bureau's determination.

~~(4)~~(3) The employer shall state the specific grounds or reasons for the protest or appeal of the bureau's determination, and shall include supporting documentation. The bureau may refuse to grant a hearing to the employer where the employer has failed to state the specific grounds or reasons for the protest or appeal or has failed to provide supporting documentation as required by this rule.

~~(5)~~(4) For the purpose of hearing the protest or appeal, the administrator may appoint an adjudicating committee to provide employers with hearings on such matters referred to the committee.

(B) The adjudicating committee 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 employers.

(C) The adjudicating committee shall hold meetings and hearings to determine matters referred to it by the administrator for adjudication. With the approval of the administrator, the committee members may delegate alternate bureau employees to act on their behalf. The committee may issue decisions without formal hearing, but shall afford an employer the opportunity for a formal hearing before the committee upon request. A prompt, efficient, and expeditious determination of matters coming

before the committee shall be ensured to protect the interests of employers and the state insurance fund.

- (D) If an employer requests a hearing before the adjudicating committee, and has complied with (A)(1) of this rule by filing a protest form with the bureau, or the committee determines that a hearing is in the best interests of the employer or the state insurance fund, the committee 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 fourteen days before the date of such hearing. In justifiable cases, an emergency hearing may be arranged with the adjudicating committee.
- (E) The committee shall keep a record of its dockets and proceedings. The committee's decisions shall be reduced to writing and mailed forthwith to all interested parties and shall state the evidence upon which the decision was based and the reasons for the committee's actions. The decision of the committee shall be the decision of the administrator. If the employer files a written appeal within thirty days of the employer's receipt of the committee's decision, the administrator or the administrator's designee shall hear the appeal of the decision of the committee, and shall conduct a hearing for such purpose.
- (F) The administrator may authorize the adjudicating committee to consider the following matters:
- (1) Requests for waiver of a default in the payment of a premium under section 4123.37 of the Revised Code;
 - (2) Requests for settlement of liability of a noncomplying employer under section 4123.75 of the Revised Code;
 - (3) Petitions objecting to assessment of premium under rule 4123-14-02 of the Administrative Code and section 4123.37 of the Revised Code;
 - (4) Employer's request for abatement of penalties under rule 4123-09-07 of the Administrative Code and section 4123.32 of the Revised Code;
 - (5) Protests of audit findings, manual classifications, experience ratings, retrospective ratings, or transfers or combinations of risk experience;
 - (6) Any other risk or premium matters as authorized and delegated by the administrator under Chapters 4121., 4123., and 4131. of the Revised Code.

Agency Rule Review

Chapter	Title	# of rules	Legal Authority			Type of Review		JCARR review	Staff Contact	Review due	Proposed Sched	Proposed Timeline						Filed
			S	J	O	5YRR	Non 5 YRR					complete internal review	complete external review	Senior Staff Review Date	BOD Bk. Ddin*	BOD 1st read	BOD Vote	
4123:1-7	Metal casting	14	x			x		Yes	M. Ely	2008	Mar-09	Complete	2/24/09	2/26/09	6-Mar	19-Mar	30-Apr	
4123:1-9	Steel Making, Manuf, & Fabrica.	5	x			x		Yes	B. Loughner	2008	Mar-09	complete	2/15/09	2/26/09	6-Mar	19-Mar	30-Apr	
4123:1-11	Laundry & Dry Cleaning	5	x			x		Yes	R. Gaul	2008	Mar-09	complete	2/24/09	2/26/09	6-Mar	19-Mar	30-Apr	
4123-5	Miscellaneous Provisions	6		x	x	x		Yes	K. Robinson	2009	Apr-09	complete		4/2/09	10-Apr	28-Apr	29-May	
4123-18	Rehab of Inj and Dis Workers	16	x			x		Yes	K.Fitsimmons, K Robinson	2008	Apr-09	complete	in process	4/2/09	10-Apr	28-Apr	29-May	
4123:1-1	Elevators	5	x			x		Yes	R. Gaul	2008	Apr-09	complete	2/24/09	4/2/09	10-Apr	28-Apr	29-May	
4123:1-13	Rubber & Plastics	4	x			x		Yes	M. Lampl	2008	Apr-09	complete	3/17/09	4/2/09	10-Apr	28-Apr	29-May	
4123:1-17	Window Cleaning	7	x			x		Yes	D. Feeney	2008	Apr. 09	complete	3/24/09	4/2/09	10-Apr	28-Apr	29-May	
4123-6-08	2009 Provider & Service Fee Schedule						x		Graff		Apr-09	3/15/09	4/10/09	4/2/09	10-Apr	17-Jun	31-Jul	
4123-14	Non-complying employer	6	x			x		Yes	D.C. Skinner	2008	May-09			4/30/09	8-May	28-May	19-Jun	
TBD	2009 Vocational Rehab Services Fee Schedule						x		K. Fitzsimmons, Graff		Jun-09	4/30/09	5/15/09	5/28/09	5-Jun	17-Jun	31-Jul	
4123-6-01 to 18	HPP- Program	49	x	x	x	x		Yes	F. Johnson	2009	Jun-09	4/6/09	5/7/09	5/28/09	5-Jun	17-Jun	31-Jul	
4123-6-50 to 73	HPP/QHP	24	x	x	x	x		Yes	F. Johnson	2009	Jul-09	5/1/09	6/14/09	7/2/09	10-Jul	29-Jul	28-Aug	
4123-6-16.2	C9 Rule Change						x		Phillips		Jul-09	5/1/09	6/1/09	7/2/09	10-Jul	29-Jul	28-Aug	
4123:1-5	Workshops & Factories	32	x			x		Yes	M. Ely	2008	Aug-09	7/15/09	7/17/09	7/30/09	7-Aug	27-Aug	25-Sep	
4123-6-19 to 46	HPP- Provider	33	x	x	x	x		Yes	F. Johnson	2009	Sep-09			8/27/09	4-Sep	24-Sep	30-Oct	
4123-6-37.1	2010 Inpatient Fee Schedule						x		Graff, Casto		Sep-09	6/1/09	7/25/09	8/27/09	4-Sep	24-Sep	30-Oct	
4123 - 7	Payments to Health Care Prov.	30	x	x	x	x		Yes	F. Johnson	2009	Oct-09	7/15/09	9/15/09	10/1/09	9-Oct	29-Oct	20-Nov	
4123-6-37.3	2010 ASC Fee Schedule						x		Graff, Casto		Oct-09	7/15/09	9/1/09	10/1/09	9-Oct	29-Oct	20-Nov	
4123-6-37.2	2010 Hospital Outpatient Fee Schedule						x		Casto, TBD		Nov-09	8/15/09	9/30/09	10/22/09	31-Oct	19-Nov	17-Dec	
4123-9	General Policy	12	x			x		Yes	J. Smith, TK, RM	2008	Nov-08-Jan-09	5/1/09		7/2/09	10-Jul	29-Jul	28-Aug	
	total rules for 08-09	248																

S=Statutory
J=Judicial
O=Operational

* materials in final form

12-Month Governance Committee Calendar

Date	May 2009	Notes
5/28/2009	1. Launch Board Self- Assessment	
	2. Five year rule reviews	
	3. Rehab of Injured and Disabled workers' rule	
	4. 2009 Provider and Service Fee Schedule	
	5. Non-complying employer rule	
Date	June 2009	
6/18/2009	1. Finalize Board Self- Assessment	
	2. Discussion of Committee Membership Recommendations	
	3. Administrator's objectives for 2009/10	
	4. Voc rehab fee schedule	
	5. HPP program	
Date	July 2009	
7/29/2009	1. Five Year Rule Review	
7/30/2009	1. Five Year Rule Review	
	2. Committee membership recommendations	
Date	August 2009	
8/27/2009	1. Five Year Rule Review	
Date	September 2009	
9/23/2009	1. Five Year Rule Review	
9/24/2009	1. Governance Guidelines	
	2. Committee Charters	
Date	October 2009	
10/29/2009		
Date	November 2009	
11/19/2009		
Date	December 2009	
12/16/2009		

12-Month Governance Committee Calendar

Date	January 2010	Notes
Date	February 2010	
Date	March 2010	
Date	April 2010	