Common Sense Business Regulation (BWC Rules)

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

Rule 4123-17-58 (Rescind and replace)

Rule-4123-17-58.1 (Rescind)

Rule Review

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

   Citation: __R.C. 4123.34_____

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

   What goal(s): Provide a program that is designed to help Ohio employers prevent occupational injuries attributed to substance abuse. The Drug Free Safety Program (DFSP) will extend eligibility compared to the current program. It will also provide measurable results and will be actuarially sound. Replacement of Rule 4123-17-58 is offered in conjunction with rescission of Rule 4123-17-58.1. BWC seeks to replace two older rules with a less-complicated rule that encourages drug-free programs in employer safety efforts.

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.

   If no, explain:

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

Drug Free Safety Program
Rules 4123-17-58 and 4123-17-58.1

Introduction

Rules 4123-17-58 and 4123-17-58.1 describe the Drug-Free Workplace Discount Program (DFWP) and the Drug-Free Workplace Discount Program for small employers (DFWP-EZ) were adopted in 1997 and 2002, respectively.

Background Law

Pursuant to Revised Code 4123.34(E), the Administrator may grant a discount on premium rates to an eligible employer that meets the requirements of a defined loss prevention program.

Proposed Change

Based on interested parties comments on the current program and responses to the Division of Safety and Hygiene's staff recommendations, management is recommending rescinding 4123-17-58.1 and rescinding 4123-17-58. 4123-7-17-58 would be replaced by rules governing a new loss prevention program to be called the Drug Free Safety Program (DFSP).

The DFSP will have two levels of participation: "Basic" and "Advanced". Both levels require components of a safety program, written substance abuse policy, employee education, supervisor training, drug and alcohol testing, and employee assistance.

The DFSP is designed to have easier application for employers, increase employer participation, provide measurable results and be actuarially sound.

Stakeholder Involvement

BWC Staff met with interested parties in September, 2009 to review the current program and solicit input for improvements. In January, 2010, the same group met to provide input on the design of the DFSP. A matrix summarizing the interested parties' input from the January meeting is included.

The rule has been circulated to stakeholders, and the response matrix will be provided at the March committee meeting.

4123-17-58 Drug-free safety program (DFSP) and comparable program.

Pursuant to division (E) of section 4123.34 of the Revised Code, the administrator may grant a benefit in the form of a discount on premium rates and/or grants to an eligible employer that meets the drug-free safety program (DFSP) requirements under the provisions of this rule.

(A) As used in this rule:

(1) "Program," "Drug-free safety program" or "DFSP" means the bureau's loss prevention and safety program which may offer a benefit to eligible employers for implementing a program encompassing elements that promote occupational safety and health for workers by preventing and reducing the risk of workplace accidents and injuries attributed to the use and abuse of alcohol and other drugs, including prescription, over-the-counter, and illegal drugs.

(2) "Comparable program" means a program referred to in Section 153.01 of the Revised Code required for construction contractors and subcontractors with elements that are, generally, similar to those of the bureau's DFSP and which qualify employers in the construction industry to provide labor services and/or supervision of such labor services on a state of Ohio public improvement projects.

(3) "Safety-sensitive position or function" means any job position or work-related function or job task designated as such by the employer, which through the nature of the activity could be detrimental or dangerous to the physical well-being of the employee, co-workers, customers or the general public through a lapse in attention or judgment. The safety-sensitive position or function may include positions or functions where national security or the security of employees, co-workers, customers, or the general public may be seriously jeopardized or compromised through a lapse in attention or judgment.

(4) "Supervisor" means an employee who supervises others in the performance of their jobs, has the authority and responsibility to initiate reasonable suspicion testing when it is appropriate, and has the authority to recommend or perform hiring or firing procedures.

(5) "Consortium" means a pool of employers and their employees established to provide services to employers to help the employers meet DFSP requirements. A consortium may contract with laboratories certified by the U.S. department of health and human services/substance abuse and mental health services administration and will operate in concert with established standardized protocols and procedures that are consistent with current federal guidelines for testing.

(B) Application process.

The bureau shall provide application and renewal forms to be completed by employers seeking to participate in the DFSP and shall have final authority to approve a state fund employer's participation in this program. Self-insuring employers and state-fund employers not participating in the DFSP should submit an application for a comparable program if they bid on or provide labor for state of Ohio public improvement/construction projects. An employer's participation and renewal of participation in a DFSP shall be on a policy year basis.

(1) A private employer shall apply no later than the last business day of April for the policy year beginning July first of that year except that, for the policy year beginning July 1, 2010, a private employer shall apply no later than the last business day in May.

(2) A public employer taxing district shall apply no later than the last business day of October prior to the policy year beginning January first of the following year.

(3) An employer may withdraw its application for enrollment in the DFSP at any time prior to the start of the policy year. When an employer becomes aware that it is unable to meet the requirements of the DFSP level at which the employer is participating, the employer shall notify the bureau and the bureau shall withdraw the employer from the program. The employer shall return any monetary benefits for any policy year for which a program requirement was not fully met.

(C) Eligibility requirements.

Eligibility for program benefits is limited to state-fund employers. Self-insuring employers and state-fund employers desiring a comparable program shall identify this intent on the DFSP application form and shall satisfy all of the eligibility requirements of this rule or of Section 153.01 of the Revised Code. An employer that is found to be ineligible for participation in the DFSP may reapply for a subsequent policy year. An employer may implement a DFSP that exceeds the minimum requirements for the program level (basic or advanced) approved by the bureau.

(1) The employer shall be current at the time of bureau review of application for the DFSP and throughout the policy year. Current means an employer is not more than forty-five days past due on any and all premiums, assessments, penalties or monies otherwise due to any fund administered by the bureau, including amounts due for retrospective rating.

(2) The employer may not have cumulative lapses in workers' compensation coverage in excess of forty days within the twelve months preceding the original application deadline or subsequent anniversary deadline wherein the employer seeks renewal for the DFSP.

(3) The employer shall be in an active, reinstated, or debtor-in-possession policy status at the time of bureau review of application for the DFSP.

(4) The employer shall continue to meet all eligibility requirements during participation in the program, when applying for renewal, and during each subsequent year of participation in the program.

(D) General program requirements.

The chief executive officer or designated management representative of the employer shall sign and certify the application form that the employer shall meet, at a minimum, the DFSP requirements for which the employer has applied. The signature certifies that the employer shall return any monetary benefits associated with any benefits received, should the employer fail to implement or meet the requirements of the DFSP for which it has applied and been approved.

(E) Program requirements – basic program level.

To receive a benefit as specified in paragraph (J) of this rule for implementing a basic DFSP, an employer shall fully implement, at a minimum, the following program elements by the applicable dates:

(1) Safety – The DFSP requires a participating employer to integrate safety into its DFSP including, but not limited to:

(a) Completing and submitting the bureau's online safety assessment within the time-frame specified by the bureau;

(b) Ensuring each supervisor completes, one time at a minimum, accident-analysis training within the time-frame specified by the bureau; and

(c) Utilizing online accident-analysis reporting on the bureau's website within the time-frame specified by the bureau from the date of the accident or the date the employer first becomes aware of the accident.

(2) Policy – Employers are required to put in place a written DFSP policy which shall, at minimum, provide a full and fair disclosure of the reasons for implementing a DFSP, the program provisions and procedures, the responsibilities and rights of all employees subject to the provisions and procedures of the program, the consequences of an employee's failure to comply with the provisions and procedures of the program, that the DFSP applies to all employees, and that the employer is committed to employee health.

(3) Employee education – The DFSP shall include education for all employees and supervisors to promote awareness and understanding of the content of the employer's DFSP written policy, and the safety, security and health risks as well as declining productivity associated with the use of alcohol and other drugs in the workplace. The training shall be provided during the initial year of participation and annually thereafter.

(4) Supervisor skill-building training – The DFSP shall include skill-building training for all supervisors in support of enforcing the employer's written DFSP policy and procedures during the initial year of participation and annually thereafter.

(5) Drug and alcohol testing – The DFSP program shall include alcohol and other drug testing which conforms to the federal testing model. The employer shall implement and pay for alcohol and other drug testing required by DFSP participation other than for re-testing requested by an employee and follow-up testing. Alcohol and other drug testing shall occur as specified by the bureau and shall be applied to, at minimum, the following categories:

(a) Pre-employment/new-hire drug testing;

(b) Post-accident alcohol and other drug testing;

(c) Reasonable suspicion alcohol and other drug testing; and

(d) Return-to-duty and follow-up alcohol and other drug testing.

(6) Employee assistance – The DFSP shall include an employee assistance plan. Upon an employee testing positive, in addition to any corrective action deemed appropriate as specified in the employer's written policy, the employer shall, at minimum, explain to the employee what a substance abuse assessment is and, by way of referral, shall provide a list containing names and addresses of qualified substance abuse assessment resources that can administer a substance assessment.

(F) Program requirements – advanced program level.

To receive a benefit as specified in paragraph (I) of this rule for implementing and operating an advanced DFSP, an employer shall fully implement, at a minimum, the following program elements by the applicable dates:

(1) The employer shall meet all of the requirements of a basic DFSP as provided in paragraph (E) of this rule.

(2) The employer shall:

(a) Apply for the DFSP advanced level on the initial participation application or request renewal into the advanced level when completing the self-assessment progress report;

(b) Ensure that its written DFSP policy clearly reflects how random drug testing will be implemented and how additional employee assistance will be provided;

(c) Ensure conducting 25-per cent or higher random drug testing of the employer's workforce each policy year;

(d) Pre-establish a relationship for a substance assessment of an employee who tests positive, comes forward voluntarily to indicate he or she has a substance problem, or is referred by a supervisor, with the employer paying for the cost of the assessment;

(e) Timely submit a safety action plan based on the results of the completed safety assessment which outlines specific safety process improvements the employer intends to implement during the remainder of the policy year; and

(f) Commit to not terminate the employment of an employee who tests positive for the first time, who comes forward voluntarily to indicate he or she has a substance problem, or who is referred by a supervisor for an assessment.

(G) Progress reporting and renewal requirements.

(1) The employer shall comply with the following requirements for initial participation and annual renewal of DFSP participation within the time-frames specified by the bureau. In order to qualify for renewal, an employer shall have implemented all requirements of its basic or advanced level DFSP by the implementation date specified by the bureau. Comparable employers shall have in place a compliant written DFSP policy and shall have completed employee education and supervisor training for all employees and supervisors that will work on a State of Ohio public improvement project as specified in Sec. 153.01 of the Revised Code no later than the time the employer provides labor services or on-site supervision of such labor services on such a project.

(2) The employer shall meet reporting requirements which require submission of an annual report on a form provided by the bureau showing that the DFSP requirements were met by the deadline date specified by the bureau for each year of participation in a DFSP. The reporting deadline date for January participants is the last business day in September and, for July participants, is the last business day in March. If the employer is applying for renewal, the employer shall stipulate which DFSP level or comparable program is requested for the following policy year. Reports shall be certified by the chief executive officer or designated management representative of the employer. The employer shall provide information as requested by the bureau regarding each component of its basic or advanced level or comparable program, shall provide any other documentation required by the bureau and shall maintain on-site statistics as required by the bureau. The bureau shall hold the information submitted on or with these annual reports and other information submitted by the employer in meeting DFSP requirements as confidential pursuant to section 149.43 of the Revised Code to avoid revealing an employer's proprietary trade secrets.

(a) Safety – For the DFSP basic level, the employer shall report its progress to the bureau in terms of the required safety assessment, including what was learned through the safety assessment and submission of online accident-investigation information. For DFSP advanced level, the employer shall also report progress on its safety action plan.

(b) Policy – The employer shall certify to the bureau that it has developed a written DFSP policy that meets or exceeds the requirements associated with the DFSP level or comparable program for which the employer is participating. The employer shall submit a copy of the written policy as required by the bureau.

(c) Employee education – The employer shall provide information to the bureau regarding how employee education requirements have been met.

(d) Supervisor training – The employer shall provide information to the bureau regarding how supervisor training requirements have been met.

(e) Drug and alcohol testing – The employer shall report statistics regarding alcohol and other drug testing to show how testing requirements were met. The employer shall report information about positive tests including the drugs involved and their measured testing values, and the subject employee gender, age, and location of employment.

(f) Employee assistance – For the DFSP basic level, the employer shall provide information regarding number of employees terminated based on a first positive alcohol or other drug test, number of employees referred for an assessment, and other assistance information required by the bureau. For the DFSP advanced level, the employer shall also provide information related to number of employees who tested positive and were given a second chance, number of employees whose employment was terminated and circumstances associated with termination, and additional information as required by the bureau.

(g) Demographics – An employer implementing a DFSP shall report its average annual number of employees and number of new hires since the start of the current DFSP policy year.

(H) Disqualification from program and reapplication.

The bureau may remove an employer's participation in the DFSP for failure to fully implement a DFSP in compliance with the approved program level requirements. The bureau shall send written notice of cancellation to the employer and shall require the employer to reimburse the bureau for any benefits received to which the employer was not entitled.

(1) If the bureau removes an employer from the DFSP under this rule for failure to meet program requirements, the employer may reapply for the DFSP for the next policy year, unless the employer has received a benefit and has failed to reimburse the bureau for the benefit. The bureau may deny the application based on circumstances of previous participation.

(2) When an employer becomes aware that it is unable to fully implement its DFSP by the required implementation date, the employer shall notify the bureau immediately and shall reimburse the bureau for any benefits received for participating during that policy year.

(I) Benefit requirements.

An employer participating in the DFSP may be eligible to receive a benefit as provided for in this rule and as specified in Appendix A.

(1) Any benefit in the form of a discount to premiums will be applied to the employer's premium rate, semi-annually or annually depending on the payroll reporting and premium payment cycle of the employer, during the policy year of participation. It will not be applied to disabled workers' relief fund assessments or administrative assessments, nor will the benefit alter the employer's actual experience modifier under rule 4123-17-03 of the Administrative Code.

(2) The application of a DFSP discount shall occur semi-annually or annually in concert with each policy year of DFSP participation.

(J) Application and renewal rejection.

An employer may appeal application rejection or renewal rejection to the bureau through the specified bureau complaint process.

(K) Hold harmless statement.

Nothing in this rule requires an employer to implement any policies or practices in developing a DFSP that conflict or interfere with existing collective bargaining agreements. However, a collective bargaining agreement that prevents an employer from complying with program requirements may prevent an employer from participating in the DFSP. Where there are legal issues related to development and implementation of a DFSP, it is the employer's responsibility to consult with its legal counsel to resolve these issues. An employer shall certify in its application to the bureau that it shall hold the state of Ohio harmless for responsibility or liability under the DFSP.

(L) Drug-free grants.

Pursuant to section 4121.37 of the Revised Code, the administrator may establish a program of DFSP safety grants associated with reimbursement at specified levels or rates for specified DFSP start-up costs for eligible employers. These grants may be available to only DFSP employers and not to those with a comparable program.

(M) Combinations, partial transfers and successors.

Where an employer that is participating in a basic or advanced level DFSP is combined into another policy, has a partial transfer or is a successor, the bureau shall determine how the employer's DFSP participation should transfer with considerations for whether the involved entity also has a DFSP and the level of the employer's DFSP.

(N) Compatibility with other bureau rate plans.

An employer participating in the DFSP shall be entitled to participate in any other bureau rate program concurrent with its participation in the DFSP, except that an employer may not receive the DFSP benefit in addition to the benefit for participating in the following rate programs:

(1) EM cap;
(2) $15,000 medical only;
(3) Group-experience rating in conjunction with DFSP basic level;
    i. Group–experience-rated employers can participate at the advanced level of the DFSP and receive the incremental difference between the basic and advanced level benefits.
(4) Group-retrospective rating;
(5) Individual-(paid-loss) retrospective rating;
(6) Large deductible; and
(7) One claim.

Effective: 07/1/2010

Promulgated Under: 111.15

Statutory Authority: 4121.12, 4121.121

Rule Amplifies: 4123.29, 4123.34

Prior Effective Dates: 4/1/97, 7/1/98, 5/20/99, 7/1/99, 9/7/99, 3/27/00, 1/1/01, 7/1/01, 1/1/02, 12/1/02, 5/15/03, 7/1/04, 05/21/2009

APPENDIX A

(1) If the benefit for an employer implementing a DFSP is offered in the form of a discount, the discount shall be as follows:

(a) For an employer implementing a basic DFSP, 4 per cent;

(b) For an employer implementing an advanced DFSP, 7 per cent;

(c) For an employer implementing an advanced DFSP and in group-experience rating, 3 per cent;

(d) For an employer implementing a comparable program, no discount.

(2) The application of any discount shall occur effective when premium payments are made for the period that begins July first of the policy year for participating private employers and January first of the of the policy year for participating public employers.

COMPARISON BETWEEN CURRENT DRUG-FREE WORKPLACE PROGRAM (DFWP) RULE AND PROPOSED DRUG-FREE SAFETY PROGRAM RULE

Drug-Free Workplace Program (DFWP) Current Rule	**Drug-Free Safety Program (DFSP) Proposed Rule**
DFWP benefit program	**DFSP basic and advanced, and comparable program**
(A) Definitions of terms used in this rule	(A) Reducing definitions from 14 to five with the remaining addressed through policy and program materials
(B) Application process • Two program years for private employers (July and January); one for public employers (January). • Employers may submit applications at any time, but discounts are tied to a specific policy year. • Private employers must apply by June 30 for July year. • Public and private employers must apply by Dec. 31 for January year. • Progress reports due by March 31 for July year and Sept. 30 for January year.	(B) Application process • Moves participation period to match policy years (July policy year for private employers; January for public employers) for consistency with all BWC programs. • Changes application deadlines to last business day of April for July policy year, last business day of October for January policy year and last business day of May for initial year participation (July 2010), making deadlines the same for all BWC programs. • Alters reporting deadline to last business day in March for July policy year and last business day in September for January year.
(C) Eligibility requirements • Standard BWC eligibility criteria with no cumulative lapses of more than 40 days in past year apply. • Participation in another BWC program or alternate-rating plan may or may not involve drug-free discount as specified in rule. • Specifies DFWP may be “stacked” with the (small) deductible program and not with (individual) retrospective rating, group-experience rating or group-retrospective rating.	(C) Eligibility requirements • Expands continuous participation without time limits. • Compatibility with other BWC programs for receiving benefits is addressed in a separate paragraph; paragraph (N) in the proposed rule.
(D) General program requirements • There is a maximum of five years of discount eligibility.	(D) General program requirements • Expands continuous participation without time limits.

Drug-Free Workplace Program (DFWP) Current Rule	Drug-Free Safety Program (DFSP) Proposed Rule

(E) Program requirements
• Specifies the requirements by program element and details the components of each element to be considered compliant for a benefit. Details include:
  ○ Content of written policy;
  ○ Suggested content of employee education, number of hours and who may provide services;
  ○ Suggested content of supervisor training, number of hours and who may provide services;
  ○ Drug and alcohol testing, including what drugs, when testing should occur and processes to use;
  ○ Types of employee assistance to offer;
  ○ The steps of BWC's 10-Step Business Plan for Safety to complete, when applicable ;
  ○ Employer may use drug-free vendors to meet requirements.
	(E) Program requirements – basic program level
	• Specifies basic level requirements.
	• Limits specific details of the content of written policy and moves them to BWC policy.
	• Eliminates 17 mandates for written DFSP policy and captures general content, leaving details for BWC policy and written program materials.
	• Moves the details about training content, procedures and qualifications of educators/trainers to be detailed in BWC policy.
	• Identifies alcohol and other drugs for which testing will occur under specified circumstances, to be detailed in BWC policy.
	• Places information regarding recommended cut-off level for a positive test for alcohol in BWC policy.
	• Identifies in BWC policy regarding who pays for cost of testing.
	• Identifies that employee assistance requires a list of community resources and stresses commitment to employee health in written DFSP policy.
	• Introduces safety requirements, including online safety assessment, online accident-analysis training for all supervisors and online accident reporting.

(F) Additional level-specific program requirements • Describes the requirements to receive level 1, level 2 and level 3 benefits including steps of BWC's 10-Step Business Plan for Safety, in addition to random drug testing and increased assistance.	(F) Program requirements – advanced program level • Describes requirements that must be met in addition to basic level requirements to receive an advanced level benefit. • Details in BWC policy and program materials the timing for meeting requirements. • Stipulates requirements for random drug testing, leaving details to BWC policy. • Requires providing additional assistance related to paying for a substance assessment. • States requirement for completing a safety action plan based on the results of the safety assessment.

Drug-Free Workplace Program (DFWP) Current Rule	Drug-Free Safety Program (DFSP) Proposed Rule
(G) Progress reporting and renewal requirements • Details timing and content of renewal process and discount retention associated with timely filing of a self-assessment progress report showing substantive compliance with program requirements. • Requires access for on-site audit. • Details timing of report submission as Sept. 30 for January year and March 31 for July year. • Specifies certification that program has been implemented by end of first quarter of initial program year. • Details content of progress report, especially testing information, and the type of records to maintain on-site.	(G) Progress reporting and renewal requirements • Employer must meet reporting requirements as specified in BWC policy and written program materials, including timely submission of an annual report by a deadline date specified by BWC showing how employer met requirements. • Rule stipulates that employers applying for renewal must indicate which DFSP level they are requesting or comparable program. • Employers must provide information as requested by BWC on annual report regarding each element of program level and must maintain on-site statistics as required by BWC.
(H) Disqualification from program and reapplication • Identifies the circumstances under which BWC may cancel an employer's participation.	(H) Disqualification from program and reapplication • No substantive change.
(I) Discount requirements • Specifies discounts of 10, 15, and 20 percent for levels 1, 2 and 3, respectively. • Limits employers to five continuous years of discount participation. • Employers completing less than five years of discount are not eligible to re-apply with a break in continuous participation.	(I) Benefit requirements • Discounts are specified in Appendix A. • Rule limiting employers to five continuous years of discount participation is changed to allow unlimited years of discount participation.
(J) Application and renewal rejection • Employers may appeal application/enrollment rejection and renewal rejection to BWC's adjudicating committee pursuant to Ohio Administrative Code 4123-14-06.	(J) Application and renewal rejection • Employers may appeal application/enrollment rejection and renewal rejection to BWC through the specified complaint process.

Drug-Free Workplace Program (DFWP) Current Rule	Drug-Free Safety Program (DFSP) Proposed Rule
(K) Hold harmless statement • States that nothing in this rule requires an employer to implement any policies or practices in developing a DFWP program that conflict or interfere with existing collective bargaining agreements. • Suggests employer and employees engage in a collaborative effort to improve workplace safety by implementing a DFWP program that includes employee input and support. • States that it is employer's responsibility to consult with its legal counsel to resolve labor issues. • The employer certifies in its application to BWC that it shall hold the state of Ohio harmless for responsibility or liability under the DFWP program.	(K) Hold harmless statement • Same approach for DFSP as for current DFWP. • Clearly states that a collective bargaining agreement that prevents an employer from complying with DFSP requirements may prevent an employer from participating in DFSP.
(L) Drug-free grants • Lays out in detail how drug-free safety grant program may be established pursuant to Ohio Revised Code section 4121.37 and provides details on all aspects of what grants might reimburse.	(L) Drug-free grants • States the BWC administrator may establish a program of DFSP grants for eligible employers with reimbursement at rates specified in BWC policy. • Grants are available to DFSP employers at the basic and advanced levels and not to employers with a comparable program.
(M) Combinations, partial transfers and successors • Addressed in BWC policy and not in rule.	(M) Combinations, partial transfers and successors • States that BWC shall determine how an employer's DFSP participation should transfer with considerations for whether the involved entity also has a DFSP and the level of the employer's DFSP. • Details based on various scenarios will be in BWC policy.

Drug-Free Workplace Program (DFWP) Current Rule	Drug-Free Safety Program (DFSP) Proposed Rule
• Compatibility with other bureau rate plans is addressed under (C) "Eligibility requirements" above, which details whether a DFWP discount is available on top of the benefit for participating in a number of BWC rate programs: DFWP is compatible with only the deductible program as stated in this rule.	(N) Compatibility with other bureau rate plans • Employers participating in another BWC rate plan concurrently with DFSP participation are limited as to whether the DFSP discount is available in addition to the other program benefit as follows: ○ DFSP is compatible with group-experience rating for advanced level DFSP, safety council, small deductible and for employers with claims that have dates of injury prior to 1/1/2011 where salary continuation is paid.
Drug-Free Workplace Program (DFWP) Current Rule	**Drug-Free Safety Program (DFSP) Proposed Rule**
Discounts are addressed in section (I).	The proposed DFSP rule includes one appendix, "Appendix A," which addresses the benefit in terms of discounts to employers participating in the program. The benefits will be offered in the form of discounts and were determined based on thorough pricing analysis by Deloitte Consulting and BWC's Actuary Division. The offered discounts are as follows: • Four percent for an employer implementing a Basic DFSP; • Seven percent for an employer implementing an Advanced DFSP; and • The incremental benefit of three percent for an employer implementing an Advanced DFSP and also participating in group-experience rating. An employer implementing a comparable program receives no discount.

The following table provides a summary of needed changes in other BWC rules relative to the proposed DFSP rules:

Related Rules	**Drug-Free Safety Program (DFSP) Compatibility**
Other BWC rate programs contained different information regarding compatibility with DFWP. The following program rule will be modified to reflect the compatibility decisions shown in the column directly to the right: (1) Section (D) of the group-experience-rating rule, 4123-17-64, will need to be modified to reflect the change allowing group-experience-rated employers participating in the DFSP advanced level to receive the incremental difference of three percent between the basic and advanced level benefits; (2) Section (E)(2) of the one claim program rule, 4123-17-71, which allows a DFWP discount on top of a one claim program benefit, will need to be removed to be consistent with the proposed DFSP rule; (3) Section (M) of the deductible program rule, 4123-17-72, will need to be changed to include the DFSP on the list of programs excluded from receiving both a DFSP benefit along with participating in the large deductible program where a deductible amount of twenty-five thousand dollars or more is selected; and (4) Section (D) of the group-retrospective-rating rule, 4123-17-73, will need to be changed to use “DFSP” instead of “DFWP.”	An employer participating in the DFSP shall be entitled to participate in any other bureau rate program concurrent with its participation in the DFSP, except that an employer may not receive the DFSP benefit in addition to the benefit for participating in the following rate programs: (1) EM cap; (2) $15,000 medical only; (3) Group-experience rating in conjunction with DFSP basic level; i. Group–experience-rated employers can participate at the advanced level of the DFSP and receive the incremental difference between the basic and advanced level benefits. (4) Group-retrospective rating; (5) Individual-(paid-loss) retrospective rating; (6) Large deductible; and (7) One claim.

Summary of Interested Parties Input Relative to the Proposed DFSP Design

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations
<u>Safety Assessment and Action Plan</u> Tool for the employers to use in looking at their own safety processes to consider if there could be opportunities for improvement. BWC offers help as appropriate. Each table seemed to think that BWC was going to measure or evaluate the employers own assessment and tell them what they are doing wrong. The team emphasized the point that this is an exercise for the employer to look at their own safety process and consider if there could be other opportunities for improvement on their behalf. The additional requirement for an action plan at the advanced level was also discussed.	Whether or not the safety assessment is mandatory for basic and advanced program, and the basis for requiring a safety action plan for the advanced program.	• Set up self assessment into industry groups and if a section does not apply add a NA (Not Applicable) section. • Smaller employers will have the lack of knowledge to fill out this form. • Explain what the employer gets out of completing this assessment. • If assessment is program dependent, build in accountability let them see the direct benefit for completing this assessment. • Tie this in with the OSHA 300 log. • Do not make this OSHA related. • Think about adding more requirements or accountabilities with the self assessment, like have a walk-through with a safety consultant. • Do not make this a test, advertise and define the purpose that this is a self awareness tool. • Make it fit for the smaller employers, require some type of follow up on the employer's part. • Make it industry specific, trucking vs. nursing homes. • Make it size appropriate. • It should be industry specific. • Work with the associations to develop industry specific assessments. • Have employer report on their progress with the self assessment. • Don't overwhelm the employer with a ton of recommendations. • Have the CEO Signoff on the assessment and have multiple people fill out the assessment to verify from a field perspective that what's on the assessment is what actually occurs in the company. • Remove the Likert scale; make the questions "yes" or "no." • Keep the scale to identify priority of action plans information. • Have the questions verify that OSHA requirements are being met, like hazard com training, OSHA log being filled out , connect it to OSHA somehow. • Use the VPP questionnaire as the assessment. • Use the scoring system. • Ask if the employer wants to share their data so they can opt in or opt out of information sharing process. • Make sure the questions do not repeat similar questions, no redundancy. • Make it industry specific. • Tap into the safety councils for industry specific assessments, have them collect the data.

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations
<u>Accident-Analysis Training and Accident Reporting</u> There was virtually no opposition to accident- analysis training, there were a few opposed to it being on-line. For accident-analysis reporting there was some opposition, but most seemed to be in favor. Agreement that an effective accident-analysis program is one of the more important components for a safe workplace.	Attendees thought some employers do a good job of accident analysis and some do not. There was some disagreement about this element; however, the majority of attendees supported this element.	• Many employers do not conduct accident analysis or do so poorly. • All supervisors should be able to take the training on-line together using a computer projector. They should also all be able to get certificates for CEUs using this approach. • Having employers do the accident analysis on-line will be beneficial. • All supervisors should take the training on-line to get a consistent message. • The training should not be on-line. • Perhaps vendors could conduct this training. • Give the employer the option to have one person take the training and then train the supervisors is a good approach. • Having employers do the accident analysis is an undue burden to them. It is also like “big brother” watching. • We should use best practices, not develop something ourselves (this comment was more geared towards the safety assessment). • There was some sentiment to using the process somehow to strengthen rebuttable presumption (the team indicated that rebuttable presumption is not within the purview of this process and has explained why).

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations
<u>Written Policy, Program Maintenance</u> What are the advantages/disadvantages of providing general guidelines for policy development: simple outline requirements versus a specific template (i.e., providing a written sample policy)?	BWC currently provides a fairly comprehensive sample policy with caveats regarding need for review by competent legal counsel.	Overall group responses: Majority recommends not providing a written policy and that BWC simplifies current sample policy and make it a template of required/suggested topics and examples. • Three tables were unanimous in that BWC should provide only a list or simple outline of required topics and should not provide a written policy. • Two tables were about evenly mixed between an outline and a written policy. • Only one table thought that BWC should provide a complete written policy. Some of the comments included: • Too many employers are taking BWC's written policy and simply putting their name on it. • A written policy may be good for small employers who do not have time to write their own policy. • An outline of topics required would make employers "think" about their policy instead of blindly assuming that BWC's policy was best for them. • Making the employer write their own policy would enhance ownership and buy-in. • Change the format of our current "policy." Use much of the same information; just make it into an outline format so it doesn't look like a policy. Make the employer type up their own policy based on the outline. • If we leave it looking like a "policy," put watermark on it that says "Sample," "Example policy. Must be reviewed by legal counsel" to prevent employer from printing and putting in a book as their policy.

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations

<u>Data Reporting</u>	None. Online completion of the self-assessment progress report by employers is the most suitable for such data collection.	Overall group responses: Unanimous – collect more data, especially, type of drugs identified.
		Comments included:
		• You can't use the data later if you do not collect it today.
		• Don't collect data you already know the answer to (i.e., industry codes, regional locations).
		• Identify what data you want, why you want it and how it will be used.
		• Some data may be best used "globally" (e.g. identify drug of choice for northeast Ohio, drug of choice for industry group).
		• Data can be used to market DFSP to employers.
		• Data can be used to refine and focus program in subsequent years.
		• Additional data to collect?
		  ○ Age of user?
		  ○ Gender of user?
		  ○ If they were "rehabilitated," did the company have EAP?
		  ○ Is the employee still working for you?
		  ○ When reporting number of tests & positives, break down into:
		  ▪ Was test conducted in response to accident?
		  ▪ Pre-Hire (pre-employment)?
		  ▪ Post-hire (new hire)?
		  ▪ Reasonable suspicion?
		  ▪ Random?
		  ▪ Number of supervisory and number hourly?
		  ▪ Number of repeat positives (i.e., given second chance)?
		  ▪ Number completing "rehabilitation" and subsequently tested positive?

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations
Employee Education for First Year and Refresher for Consequent Years	Issues raised were directed toward training content.	Comments included: • Written policy to highlight the importance of employee education. • Policy discussion includes employer's commitment to safety and health of organization and • Stress how drug/alcohol use is interwoven and impact employee's health. • Explain the drugs to be tested for and their impact on body (addiction process) as well as the community trends and impacts. • Testing process and ramifications of a positive test. For the refresher annual employee education include: • Always review policy and procedures, drugs being tested, impact of drugs on health and the body. • Review of community issues and trends. • Involve employees – interactive games, policy scenarios. • Have community resources (DARE officer, half-way house residents) share experiences and bring home the personal/family aspect of drug and alcohol use/abuse impact on family.

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations
<u>Supervisor Skill-Building and Training</u>	Issues raised were directed toward training content.	Comments were directed toward the training content to include: • Importance of program, why it's being implemented and a supervisor's role. • Discussion of liability, both personal and company. Define who is a supervisor. (Already defined in current rule.) • Develop communication skills to handle employee interactions and questions. • Develop skills of documentation, confrontation of employees and referral for testing as required. • Teach procedures and not just policy. Case studies and "what would you do" scenarios to show how to handle situations. • Skill-building assessment to determine strengths and weakness. Comments relative to refresher annual training were directed toward the training content to include: • Refine communication, documentation and confrontation skills. • Review procedural issues that have come up in the last year. • Review testing types and referral procedures (i.e., random drug testing does not equal return-to-duty testing). • Scenarios and policy review including role play. • Skills assessment to measure effectiveness and what's been missed. Other comments include: • Prove compliance using Sign-in sheets, invoice, agenda, skills assessments, BWC audits vendors: ask for proof of training and agenda topics for a percentage of their customers. • Certify vendors/providers. • Require a post-test for employees and supervisors. • BWC should dictate train-the-trainer class requirements.

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations
<u>Alcohol and Drug Testing</u> **9-Panel versus 6-Panel**	Concerns were raised about increased testing costs (about an additional $12 to $15 per test), magnified by increased costs of 25% random drug testing for employers in the DFSP Advanced Program.	Consensus favored 9-panel with expanded opiates and expanded amphetamine testing. Several attendees suggested "discounts" to cover costs.
<u>Alcohol and Drug Testing</u> **Percent of random testing**	One attendee thought dropping to 20% would help offset the higher cost of the 11-panel test. One attendee supported 10% random drug testing for the DFSP Basic Program but this wasn't supported by others.	Consensus favored 25% random drug testing for Advanced DFSP. No one supported 50% or a higher percentage, and almost every table was comfortable with 25%.
<u>Alcohol and Drug Testing</u> **Types of testing in Basic DFSP**	Attendees supported follow-up testing after negative return-to-duty test where an employee was allowed to keep his/her job for Basic and Advanced.	Consensus favored the basic program having same testing elements as current DFWP/DF-EZ Level 1.
<u>Alcohol and Drug Testing</u> **Designating cut-off levels**	There was mixed input, some attendees believed .04 BAC was "right" cut-off level, Experts suggested that BWC recommends but not mandate the cut-off level.	Given prospective liability for BWC requiring a cut-off level for alcohol that does not match an employer's risk or operational reality, it is better to recommend a cut-off level of 0.04 rather than mandate one.

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations
<u>Alcohol and Drug Testing</u> **Meeting random testing through a consortium**	No one opposed this, and many thought it was a good idea from a cost effectiveness view. BWC will have to ensure self-assessment progress report to require documentation that the employer is participating in a compliant consortium.	Consensus was to allow this option.
<u>Employee Assistance</u> **Termination versus 2nd Chance**	A significant majority of the comments favored allowing termination or at least not making 2nd chances mandatory.	• Participants comments included: • Clearly specify circumstance that might allow an employer in Advanced Program to terminate (e.g. trafficking, post offer test, illegal/criminal activities, etc.). • Providing help to employees should be our goal. • Employer history should be considered. If they have participated in this program in the past and have established history of termination on first positive or they are a national company with a termination on first positive policy, they should be allowed to maintain that even in the Advanced Program. • Policy to terminate on first positive should not preclude employer from Advanced Program. • Can employer terminate for reasons other than positive test (e.g. violation of safety rules)? • Don't allow termination even in the Basic Program. Provide a "last chance agreement." Zero tolerance (termination) does not seem to be a big issue. Most employers have group health insurance that covers substance abuse. • Employers may offer a 2nd chance, but we should not mandate it. • Small employers cannot survive if we mandate 2nd chance. • Don't like mandatory 2nd chance. • Don't believe in ever offering 2nd chance. • Mandatory 2nd chance increases employer liability, forces employer to keep unsafe employee. • Although rehab is a noble cause, employers are not in the business of rehabilitating drug-abusing employees. • Decision to terminate or offer a 2nd chance should be the employer's discretion. • Recommend 2nd chance but don't mandate.

Program Element/Component	Issues Raised	Summary of Interested Parties Comments and Recommendations
Basic versus Advanced	Nothing significant	• Consider limiting the number of years an employer can remain in Basic and then require them to step up to Advanced Program level. • Only employer with group health care plans that include substance abuse will opt for Advanced Program.
Substance Assessment	Clarifying assessment vs. assistance and designating who pays.	• Who should pay for the substance assessment? • If employer pays, it demonstrates their commitment to the program and employees. • If employee pays, it makes them invested in the process and they are more likely to follow-through. • Clarify distinction between Employee Assistance Program and a substance assessment.
"Rehabilitation"		• Rehabilitation must include chemical dependency education, behavioral change, support systems, etc., to be effective. • A negative return-to-duty test alone is not enough. • Employees should invest (help fund) their own rehabilitation.

Medical Services and Safety Committee

Chairman Harris, Directors:

Last month we presented to the Board of Directors a summary of our progress in re-tooling the DFWP. This month, we will present a first reading to the Board of the rules for the re-tooled program. The rules presented to the Board today will replace the current DFWP and Drug-Free EZ rules. The improved program, which we recommend calling the Drug-Free Safety program, will be easier to join, substantially better, provide measurable results, and be actuarially sound. Before describing the differences between the proposed rules and the current rules, I would like to provide you with a quick overview of the proposed program elements.

Proposed Drug Free Safety Program

The major aspects of the proposed program include:

1. Renaming/rebranding the Drug-Free Workplace Program as a loss prevention program with "Safety" as a primary focus of the program;
2. Create two levels of participation:
   1) Basic Program Level, and
   2) Advanced Program Level;
3. Incorporate promoting a drug-free workplace into employers' holistic approach to safety for both levels; and
4. The elements that are included in both the Basic and the Advanced levels include:
   1) Safety,
   2) Written substance policy,
   3) Employee education,
   4) Supervisor training,
   5) Drug and alcohol testing, and
   6) Employee assistance.

Enhancing and emphasizing safety into the program is expected to raise awareness relative to one of the major objectives of the program: improving accident and injury prevention.

Safety Element in Both Levels:

Both program levels will include a safety element with the following components:

1. Online Safety Self-Assessment;
2. Accident Analysis Training for Supervisors;
3. Online accident reporting; and
4. Process to provide safety services upon request or as indicated by increasing loss ratios, injury trends, inadequate accident analysis, a catastrophic claim, and/or a fatality.

Basic Program

The basic program will include:

1. **S**afety element with the above-described components. The current program has several safety components related to implementing certain steps of BWC's 10-Step Business Plan according to program participation level. This approach is complicated and does not allow for attending to the real safety needs of employers. The approach to safety in the DFSP is simplified, practical and streamlined according to employers' safety needs and will allow us to work with employers to understand and attend to those needs accordingly;
2. Drug-free policy template, which will be provided by BWC to serve as minimum. The current program has this requirement;
3. Annual employee training. The current program has this requirement. However, the training time is reduced by 50% in the DFSP, which will save employers and employees a substantial time;
4. Annual supervisor training. The current program has this requirement. However, the training time is reduced by 50% in the DFSP, which will save employers and supervisors a substantial time.
5. Pre-employment and/or new hire, reasonable suspicion, post accident, return-to-duty and follow-up drug testing. Combinations of these types of testing are required in the current program according to participation level.
6. A 6-panel drug test according to the recent changes to Federal Drug-Free Program requirements. The current program requirement is a 5-panel that is in concert with the current federal requirements; and
7. Employers will be required to share a list of community helping resources and spell out their commitment to employee health in the program written policy. These requirements are similar to those in the current program.

Advanced Program

The advanced program will have the same elements of the Basic Level, in addition to:

1. Employers will be required to provide a safety action plan following the online safety assessment. This plan will be completed by employers to establish awareness of the safety issues in their workplaces and allow for implementation of safety measures that will resolve such issues, when they exist;
2. Random drug testing at 25%, which will be applied to total workforce for private employers but only to safety-sensitive functions for public employers. The current program has different random drug testing percentages including 25% random testing; according to program level participation. In the proposed program, there are only two levels and random drug testing only applies to the advanced program participation; and
3. Employer agrees not to terminate on a first positive, offer expanded assistance including referring and paying for an assessment. The current program has this requirement at the second and third levels of participation.

DFSP and DFWP Comparison: Proposed Rule and Current Rule

While the Drug Free Safety Program is similar to the current DFWP, the two programs are structured differently. Accordingly, this led us to follow an approach of using the current program rules as a guide for drafting the proposed rules presented to you today rather than editing the current rules. The following provides some highlights of the changes and differences between the current and proposed programs and their respective rules:

1. The safety components of the DFSP are superior to those in the DFWP in that they are more streamlined to impact the safety needs in the workplace. In the proposed program, safety is considered a major element with emphasis on assisting employers in gaining better understanding of the safety needs, risks, and/or hazards at their workplaces and, accordingly, providing them with a platform to improve their safety systems as well as providing them with the assistance they need to limit these risks, abate hazards, and prevent future injuries. This focus will not burden employers.
2. The proposed program is much more simplified with two levels, Basic and Advanced in addition to the comparable program, which is based on state law and designed for companies that need to meet the State contracting requirements. The current program is very complicated. For all practical purposes, it is two programs intertwined together; DFWP and DF-EZ. Each of these programs has three levels in addition to the comparable program.
3. The current program rule addresses many details that can be addressed through policy rather than a rule. Consistent with Governor Strickland's call for simplifying State agencies rules, details of the program that can be addressed through policy were not included in the proposed program rules. For example, the old rule contained many of the details related to the content and procedures of employee and supervisors training, which can be addressed through policy rather than the rule.
4. Similar to the current rule, the proposed rule consists of 13 paragraphs (A through N),
    a. Paragraph A addresses definitions. This paragraph was shortened to include 5 definitions compared to 14 definitions in the current rule;
    b. Paragraph B addresses the program application process. The major changes in the proposed rule are related to the program participation period and program application and reporting deadlines. These changes will streamline the program participation period and deadlines with the rest of BWC's programs. This also will streamline employers and intermediate parties such as group sponsors and TPA's increased flexibility to plan and organize applications for different BWC programs;
    c. Paragraph C addresses the program eligibility requirements. Major changes in this rule are related to extending the length of participation by removing language relative to the "five-year limit". Also, references to eligibility for DFSP program benefits along with benefits from other BWC programs are moved to paragraph

N, which deals specifically with compatibility between the proposed program and the rest of BWC's programs;

d. Paragraph D addresses the program general requirements. Major changes in the proposed rule include removing the five-year participation limit;
e. Paragraph E addresses some of the particulars of the DFSP program requirements including the six major elements of the program including Safety, Written Policy, Employee Education, Supervisor skill-building training, drug and alcohol testing, and employee assistance. For example, relative to employee education, the proposed rule specifies that it should be conducted annually, leaving the particulars and training procedures to be addressed and detailed through policy. The specificity of the current rule lends itself to misinterpreting those elements of training that are not mentioned in the rule as irrelevant or not important;
f. Paragraph F describes the additional requirements for qualifying for the Advanced program level. This paragraph was shortened since the DFSP program has only two levels with simplified structure instead of three levels. Also, details included in the current rule that can be addressed through policy were removed;
g. Paragraph G describes the annual progress reporting and renewal of program participation requirements. Those requirements are similar to those in the current program except that some of the details that can be addressed by policy were removed;
h. Paragraph H addresses the circumstances under which an employer's participation in the program may be canceled by BWC. No substantive changes were made in the proposed rule compared to the current rule;
i. Paragraph I addresses the benefits to be offered to employers participating in the program. Compared to the current rule, the proposed rule is shortened because the DFSP program has two levels compared to three levels in the current program. The proposed rule is drafted to be consistent with similar paragraphs addressing similar benefits offered in other rules. With this approach, the benefit amounts are described in Appendix A to the rule. Also, details that can be addressed through policy were not included in the proposed rule;
j. Paragraph J addresses application and renewal rejection. No substantive changes were made in this rule compared to the current rule. The proposed rule continues the current rule where employers appeal application and renewal rejection to BWC through the specified bureau complaint process;
k. Paragraph K is a "Hold Harmless Statement." No substantive changes were made in this rule compared to the current rule. Similar to the current rule, the proposed rule states stipulates that nothing in the rule requires employers to implement any DFSP policies and/or practices that conflict or interfere with existing collective bargaining agreements;

l. Paragraph L addresses grant awards to employers participating in the DFSP. The proposed rule is shortened as many of the details described in the current rule can be addressed through policy. It is important in this context to mention that the BWC continues to offer DFWP education and training grants and that in the near future the program elements will be revisited to allow for assisting employers with start-up grant awards;
m. Paragraph M addresses combinations, partial transfers and successors. According to the proposed rule, continued eligibility after a business combination, partial transfers or successor situation will be evaluated on a case by case basis. No similar paragraph is included in the current rule;
n. Paragraph N addresses the compatibility between the proposed program and the rest of BWC's programs. According to the proposed rule, employers participating and receiving benefits through the DFSP can also benefit from all of BWC's programs except: EM cap; $15,000 medical only; Group-experience rating in conjunction with DFSP basic level; Group-retrospective rating; Individual-(paid-loss) retrospective rating; Large deductible; and the One-Claim programs. Employers benefiting from the Salary Continuation claim management can receive benefits for participation in the DFSP as long as the date of injury reported in the claim is before January 1, 2011. Group-experience rated employers can participate at the advanced level of the DFSP and receive the incremental difference between the basic and advanced level benefits. Major changes in this rule include:
    i. Group-experience rated employers can receive the incremental benefit associated with participating in the DFSP at the advanced level.
    ii. Employers participating in the One-Claim program will not receive the DFSP program benefits in combination with the One-Claim program benefits, and
    iii. Employers participating in the Large-Deductible program will not receive the DFSP program benefits in combination with the Large Deductible program benefits;
o. Including paragraph N in the rule generated a thorough review of rules for other programs to guarantee that the various program rules do not contradict each other. As a result of this review, we will need to make 4 changes to the above mentioned program rules. The details of those changes have been provided in your materials.
p. The proposed rule includes "Appendix A," which addresses the terms of discounts to employers participating in the program. The benefits will be offered in the form of discounts and were determined based on thorough pricing analysis by Deloitte Consulting and BWC's Actuary Division. The offered discounts are as follows:
    i. Four percent for an employer implementing a Basic DFSP,

ii. Seven percent for an employer implementing the Advanced DFSP, and
iii. The incremental benefit of three percent for an employer implementing the Advanced DFSP while in group-experience rating.

In conclusion to this presentation, we would like to emphasize the following points:

1. The improved program, which we recommend calling the Drug-Free Safety program, will be easier to join, substantially better, provide measurable results, and be actuarially sound.
2. The proposed DFSP is simpler than the current program rules. Also, BWC is committed to accommodate program application, renewal, reporting, accident reporting, safety assessment, and accident analysis training through accessible and user friendly web applications.
3. The proposed rules for the program are simpler as a result of simplifying the program and addressing details through policies. Including details in rules results in complicating the rules, undermining elements that are necessary but not mentioned in rules, and ultimately undermining the purpose of rules.
4. All the elements of the proposed program were thoroughly communicated for input through active participation of interested parties representing different stakeholders. A matrix summarizing the comments from the January meeting of interested parties meetings is included in your materials. We will have matrix that contains their comments on the rule itself available for you at the next meeting.
5. Our work on this program, once approved, will mark a new beginning for an effective and viable drug-free safety program.
6. Before this meeting, the proposed rule was distributed to interested parties for their input and we will provide the Board of a summary of their input next month.

Medical Services and Safety Committee

Drug-Free Safety Program Proposed Rule

February 25, 2010

Drug-Free Safety Program

Ohio | Bureau of Workers' Compensation

- Wider reach and expanded benefits
  - Benefits are not limited to five years
  - Simpler and easier to implement: one program with two levels, Basic and Advanced
  - Streamlined application & reporting process
- Effective with measureable results
  - Streamlined safety components
  - Better reporting data
  - Continuous measurement and evaluation
- Actuarially sound
  - Financial incentives aligned with performance

Drug-Free Safety Program

Ohio | Bureau of Workers' Compensation

Current Rule: Program Elements	Proposed Rule: Program Elements
1. Safety: Variety of steps from the 10-Step Business Plan 2. Written policy 3. Employee education • DFWP: 2 hrs annual • DFEZ: 1 hr annual 4. Supervisor training • DFWP: 4 hrs initial, 2 hrs annual • DFEZ: 2 hrs initial, 1 hr annual	1. Safety: Assessment, accident training, accident reporting 2. Written policy 3. Employee education • 1 hr annual 4. Supervisor training • 2 hrs initial, 1 hr annual

Drug-Free Safety Program

Ohio | Bureau of Workers' Compensation

Current Rule: Program Elements	Proposed Rule: Program Elements
5. Drug /Alcohol testing Random • Level 1: Pre-employment, reasonable suspicion, post accident, follow up • Levels 2&3: Level 1 plus random at 10&25%, respectively 6. Employee assistance • Levels 1&2: Provide list of community resources • Level 3: Substance abuse coverage • Levels 2&3: No termination on first positive	5. Drug/Alcohol testing • Basic: Pre-employment, reasonable suspicion, post accident, follow up • Advanced: Basic plus random at 25% 6. Employee assistance • Basic: Provide list of community resources • Advanced: Provide for assessment, no termination on first positive

Drug-Free Safety Program

Ohio | Bureau of Workers' Compensation

Paragraph	Current Rule	Proposed Rule
D, E, F: Requirements and program elements	• Five-year limit • Continuous participation required • DF/DF-EZ with three levels each • No connection between safety requirements and employer needs	• No participation limit • Continuous participation not required • Two program levels with same elements for Basic and Advanced • Streamlined safety components based on employers unique needs
G: Reporting and renewal requirements	• No accident analysis • No drug related data • Annual renewal	• Online accident analysis • Online drug testing data • Annual renewal

Drug-Free Safety Program

Ohio | Bureau of Workers' Compensation

Paragraph	Current Rule	Proposed Rule
I, L: Program benefits & Grants	• DF/DF-EZ with three levels each • Respectively, five-year limited 10, 15, and 20% benefits for levels 1, 2, &3 • Group experience employers do not receive benefits • Grants are offered for training purposes	• Simplified approach with two levels of participation, Basic and Advanced • Continuous benefits: Basic: 4% Advanced: 7% • Group experience employers in Advanced Level will receive 3% incremental benefit • Current Drug Free Grants Program will be redesigned to assist with start up cost

Drug-Free Safety Program

Ohio | Bureau of Workers' Compensation

Paragraph	Current Rule	Proposed Rule
N: Compatibility	• Addressed in paragraph C compatible with alternative rating programs except group, experience, group retro and individual retro	• Safety council programs • Small deductible • Group-experience (advanced level) • Salary continuation with injuries prior to 1/1/2011

Common Sense Business Regulation (BWC Rules)

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

Rule – 4123-3-15

Rule Review

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

   Citation: 4121.121, 4123.57

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

   What goal(s): **This rule defines the timeframe and processing of a claim that is inactive (no request for action or payments) but is still statutorily open and; processing an application for and payment of compensation pursuant to 4123.57.**

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 changes to the rules were reviewed with Ohio Association of Justice and OSBA Workers' Compensation Committee. The proposed rule was sent for additional stakeholder review and feedback on February16, 2010.

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.

Executive Summary
Claim reactivation Rule 4123-3-15(A)

Below is a synopsis of the background information regarding the above subject policy with a recommendation on improving the process.

STATEMENT OF ISSUE/CURRENT SITUATION

Currently, the Ohio Administrative Code 4123-3-15(A) defines a state fund claim as being "inactive" when there has been no activity or a request for further action within a period of time in excess of 13 months. Activity includes payment of compensation or medical services. A request includes but is not limited to allowance of an additional condition, request for medical treatment and/or services or compensation payment.

When a claim is "inactive", and a request is received by BWC or the Managed Care Organization (MCO), a review is required to determine causal relationship in relation to the original injury and the medical necessity and appropriateness of any medical treatment being requested. Once the review is completed, BWC issues an order to allow or deny the requested action. The BWC order can be appealed to the Industrial Commission which can delay requested actions.

Oftentimes, the claim becomes "inactive" after the 13 months and the injured worker is seeking to secure a six month or yearly follow up office visit with his/her physician for the allowed injuries right at the time the claim becomes inactive. However, the physician will not schedule the appointment because the claim is now "inactive". The MCO is requesting medical information from the physician to determine medical necessity and appropriateness of medical treatment in order to provide BWC a recommendation on whether to reactive the claim; however, the physician cannot provide the information because they will not see the injured worker until the claim is reactivated. So the injured worker is not able to get the needed follow up office visit with his/her physician.

SUMMARY OF RESEARCH FINDINGS

In order to review our current inactive timeframe of 13 months, we ran a data warehouse report to show the claim activity cycle over the past couple of years. This report was used to determine the most appropriate timeframe to allow claims to go "inactive" to alleviate the current situation.

We reviewed 380 claims which represented a valid sampling of the population for the period represented. Below are the reasons for the request to reactivate the claim and the percentage of claims it represents:

- 53% - LSS application filed
- 21 % - Treatment/Services requested
- 18% - C92 application filed

- 8 % - other unrelated reasons

The "true" requests to reactivate the claim (those in which treatment was being sought) only represented 21 % of the claims reviewed. Of this 21%, 18% were granted, only 3% were denied. The majority of these requests were filed right at 13 months and then tapered off significantly at 19 to 24 months.

RECOMMENDATIONS

Based on the analysis, we recommend the timeframe for reactivation be changed to 24 months. This will reduce administrative time and resources required for both BWC and MCO's in reviewing these requests and eliminate the special processing required for the period between 13 to 19 months when most requests are filed and are granted anyway. This will also reduce issuing and mailing of BWC Orders and eliminate delay in treatment to the injured worker and reduce hassle factors for the physician in having to request reactivation during this time period.

By the 24 month milestone, the requests are minimal; and probably more represent the claims that truly need reviewed for causality and medical appropriateness since the further the lapse between the original injury and the last treatment the more likely there may be intervening circumstances that would warrant a review and evaluation. Another consideration is Senate Bill 7, implemented 8/25/2006, that changed the statute of limitations to five years for all claims (lost time and medical only). With the claim life being reduced to 5 years, the 24 month timeframe seems the appropriate "halfway" checkpoint to establish a casual relationship review period.

BUSINESS IMPACTS (including training, systems, legal, operations)

- **Training/Operations –** The training department will be notified of the change so that any necessary updates to the training material may be completed. No formal training is required for BWC or the MCO staff since there is no change in the claim reactivation review protocols already established.

  The MCO Business Unit will notify the MCO's of the change via email and will identify any issues from the MCO's that may need to be resolved. This policy change will be shared with all appropriate BWC staff via email when the policy update is released on Claims On-Line Resource (COR). In addition, the claims policy field technical support team will follow-up with each of the local offices to address or further clarify the policy, and to gather any additional issues that may need to be addressed.

- **Systems –** Cambridge, MIIS and Version 3 will require the timeframe change from 13 months to 24 months. No additional coding is necessary since there are no other system logic changes other than the timeframe.

- **Legal –** This change will require a change to the Ohio Administrative Code 4123-3-15(A). In addition, the MCO Policy Reference Guide and Billing and Reimbursement Manual will need to be updated.

- **External –** Follow up and review with the OAJ, OSBA, and TPA prior to implementation is necessary. This is a change for state fund claims only, so there should be no impact to self-insured employers and their claims.

BWC Board of Directors

Executive Summary

Chapter 3 Rules
4123-3-15 and 4123-3-37

Introduction

Chapter 3 contains provisions for the administration of claims. Two rules, 4123-3-15 Claims procedures subsequent to allowance and 4123-3-37 Lump sum advancements have been reviewed and changes are currently being proposed.

Background Law

The statutory authority for the rule provisions are found at ORC 4121.11, 4121.121, 4121.30, 4121.31, 4123.05. Collectively, they provide the general framework for the management of the BWC and the administration of claims. Specifically, 4121.11 grants general rule making authority and provides that the "bureau of workers compensation may adopt its own rules of procedure and may change the same in its discretion".

Proposed Changes

Section 4123-3-15(A) is being amended to change the timeframe from 13 months to 24 months for a claim to become inactive (no request for action or payments)**.** The claim reactivation process is essentially a "checkpoint" in the life of the claim where BWC and the MCO will review any requests for allowance of conditions, compensation payments or medical services to ensure causality and medical appropriateness for the allowed conditions in the claim. A claim becomes inactive when there has been a specified lapse in time from the last request for action or payment on the claim. Currently, the specified timeframe is 13 months. After a thorough evaluation of the 13 month timeframe, the objectives underlying the same and its system impact, BWC has determined that 13 months is too short of a claim inactivation period. Given that the vast majority of reactivation request after 13 months are granted and as a result of the analysis conducted, it was determined that a 24 month specified timeframe will result in increase system efficiency while maintaining the necessary internal control for older claims. Changing the timeframe from 13 months to 24 months will reduce administrative resources required for both BWC and MCOs in reviewing claim reactivation requests and corresponding special processing required. This change will also reduce issuing and mailing of BWC Orders and eliminate delay in treatment to the injured worker and reduce hassle factors for the physician in having to request reactivation during this time period.

Adding new section 4123-3-15(C) outlines procedures for payment of compensation for permanent partial awards. These are awards that compensate a worker for amputation of a body part or loss of use of a body part. Section 4123-3-37 is being amended to eliminate reference to permanent partial awards which will be outlined in the new Section 4123-3-15(C). The purpose of this section is to allow for payment of an award for amputation or loss of use of a body part to be paid to an injured worker for the full amount of the award.

This will allow injured workers who have significant injuries access to the award without delay. Additionally, this change will reduce the need for BWC administrative resources in monitoring and issuing these payments on a bi-weekly basis.

Section 4123-3-37 is being amended to eliminate reference to permanent partial awards which will be outlined in the new Section 4123-3-15(C).

External Stakeholder Input

The suggested rule changes resulted from BWC's ongoing rule and claims process review and as the result of injured worker customer service issues as presented by the Ohio Association for Justice (OAJ). The rules have been reviewed and discussed with the OAJ and the (OSBA) Ohio State Bar Association Workers' Compensation Committee the past several months. The rules will be sent out for additional stakeholder review and feedback over the next month.

4123-3-15 Claim procedures subsequent to allowance.

(A) Requests for subsequent actions when a state fund claim has not had activity or a request for further action within a period of time in excess of ~~thirteen~~ twenty-four months.

(1) The bureau shall consider a request for subsequent action in a claim in the following situations:

(a) Where the employee seeks to have the bureau or commission modify or alter an award of compensation or benefits that has been previously granted; or

(b) Where the employee seeks to have the bureau or commission grant a new award of compensation or to settle the claim; or

(c) Where the claimant seeks to secure the allowance of a disability or condition not previously considered; or

(d) Where the claimant dies and there is potential entitlement for accrued benefits or payment of medical bills, or the decedent's dependent is requesting death benefits due to relatedness between the recognized injury and death.

(e) Except for a medical issue relating to a prosthetic device or durable medical equipment as designated by the administrator, the bureau, in consultation with the MCO assigned to the claim, shall issue an order on a medical treatment reimbursement request in a claim which has not had activity or a request for further action within a period of time in excess of ~~thirteen~~ twenty-four months as follows:

(i) The MCO shall refer a medical treatment reimbursement request in a claim which has not had activity or a request for further action within a period of time in excess of ~~thirteen~~ twenty-four months to the bureau for an order when the request is accompanied by supporting medical evidence dated not more than sixty days prior to the date of the request, or when such evidence is subsequently provided to the MCO upon request (via "Form C-9A" or equivalent). The bureau's order shall address both the causal relationship between the original injury and the current incident precipitating the medical treatment reimbursement request in a claim and the necessity and appropriateness of the requested treatment. The employer or the employee or the representative may appeal the bureau's order to the industrial commission pursuant to section 4123.511 of the Revised Code.

(ii) The MCO may dismiss without prejudice, and without referral to the bureau for an order, a medical treatment reimbursement request in a claim which has not had activity or a request for further action within a period of time in excess of ~~thirteen~~ twenty-four months when the request is not accompanied by supporting medical evidence dated not more than sixty days prior to the date of the request and such evidence is not provided to the MCO upon request (via "Form C-9A" or equivalent).

(2) Requests which require proof shall conform to the standards required by paragraph (C) of rule 4123-3-09 of the Administrative Code and rules 4123-6-20 and 4123-7-08 of the Administrative Code.

(a) Medical evidence is required to substantiate a request for temporary total disability.

(b) Medical evidence is required to substantiate the allowance of a disability or condition not previously considered.

(3) In state fund cases, upon request for subsequent action under paragraph ~~(B)~~(A)(1) of this rule, the bureau shall, upon notification, inform the parties to the claim of the pending action prior to issuing a decision. Upon request, the bureau shall provide a copy of the request and proof to the employer and the claimant, and their representatives, where applicable. Requests in self-insuring employers' cases shall be submitted to the self-insuring employer which shall accept or refuse the matters sought.

(4) The bureau or commission may require the filing of additional proof or legal citations by either party or may make such investigation or inquiry as the circumstances may require.

(5) A state fund employer shall, upon receipt of notification of the request, notify the bureau of any objection to the granting of the relief requested. Such notification must be filed within the time as required by the rules of the bureau and industrial commission.

(6) Such requests shall be determined with or without formal (public) hearing as the circumstances presented require. If the request is within the jurisdiction of the bureau and the matter is not contested or disputed, the bureau shall adjudicate the request in the usual manner. In all other cases, the request shall be acted upon by the industrial commission's hearing officer or as otherwise required by the rules of the commission, depending on the subject matter.

(7) Failure by the employee to furnish information as specifically requested by the bureau or commission shall be considered sufficient reason for the dismissal of

the request. If the employer fails to furnish any information requested by the bureau or commission, the request may be adjudicated upon the proof filed.

(B) "Application for Determination of Percentage of Permanent Partial Disability or Increase of Permanent Partial Disability" pursuant to division (A) of section 4123.57 of the Revised Code in state fund and self-insured claims.

(1) An "Application for Determination of Percentage of Permanent Partial Disability or Increase of Permanent Partial Disability" shall be completed and signed by the applicant or applicant's attorney and shall be filed with the bureau of workers' compensation. An application for an increase in permanent partial disability must be accompanied by substantial evidence of new and changed circumstances which have developed since the time of the hearing on the original or last determination. Unsigned applications shall be dismissed by the bureau. Except where an additional condition has been allowed in the claim and the request is for an increase in permanent partial disability based solely on that additional condition, a request for an increase in permanent partial disability filed without medical documentation shall be dismissed by the bureau. Whenever the applicant or applicant's representative leaves a question or questions in the application form unanswered, the bureau shall contact the applicant and applicant's representative to obtain the information necessary to process the application. Should the applicant or applicant's representative inform the bureau that the failure to provide the information necessary to process the application is beyond the applicant's control, the bureau shall take appropriate action to obtain such information.

(2) Upon the filing of the application for either of these requests, the application shall be referred to the bureau for review and processing. The bureau shall mail a copy of the application and any accompanying proof to the employer and the employer's representative, unless the employer is out of business. The employer shall submit any proof within its possession bearing upon the issue to the bureau within thirty days of the receipt of the claimant's application.

(3) Each applicant for a determination of the percentage of permanent partial disability shall be scheduled for an examination by a physician designated by the bureau, and the examining physician shall file a report of such examination, together with an evaluation of the degree of impairment as a part of the claim file. The bureau shall send a copy of the report of the medical examination to the employee, the employer, and their representatives.

(4) Upon receipt of the examining physician's report, the bureau shall review the medical evidence in the employee's claim file and shall make a tentative order as the evidence at the time of the making of the order warrants. If the bureau determines that there is a conflict of evidence, the application, along with the claimant's file, shall be forwarded to the industrial commission to set the application for hearing before a district hearing officer.

(5) Where there is no conflict of evidence, the bureau shall enter a tentative order on the request for percentage of permanent partial disability and shall notify the employee, the employer, and their representatives, in writing, of the tentative order and of the parties' right to request a hearing. Unless the employee, the employer, or their representative notifies the bureau, in writing, of an objection to the tentative order within twenty days after receipt of the notice thereof, the tentative order shall go into effect and the employee shall receive the compensation provided in the order. In no event shall there be a reconsideration of a tentative order issued under this division.

(6) If the employee, the employer, or their representatives timely notify the bureau of an objection to the tentative order, the matter shall be referred to a district hearing officer who shall set the application for hearing in accordance with the rules of the industrial commission. Upon referral to a district hearing officer, the employer may obtain a medical examination of the employee, pursuant to the rules of the industrial commission.

(7) Where the application is for an increase in the percentage of permanent partial disability, no sooner than sixty days from the date of mailing of the application to the employer and the employer's representative, the applicant shall either be examined, or the claim referred for review by a physician designated by the bureau. Such period may be extended or the processing of the application suspended by the bureau for good cause shown. If the bureau has determined that the employer is out of business the application will not be mailed and the bureau may process the application without waiting the sixty day period. The bureau physician shall file a report of such examination or review of the record, together with an evaluation of the degree of impairment, as part of the claim file. Either the employee or the employer may submit additional medical evidence following the examination by the bureau medical section as long as copies of the evidence are submitted to all parties.

(8) After completion of the review or examination by a physician designated by the bureau, the bureau may issue a tentative order based upon the evidence in file. If the bureau determines that there is a conflict in the medical evidence, the bureau shall adopt the recommendation of the medical report of the bureau medical examination or medical review.

(9) The bureau shall enter a tentative order on the request for an increase of permanent partial disability and shall notify the employee, the employer, and their representatives, in writing, of the nature and amount of any tentative order issued on the application requesting an increase in the percentage of the employee's permanent disability. The employee, the employer, or their representatives may object to the tentative order within twenty days after the receipt of the notice thereof. If no timely objection is made, the tentative order shall go into effect. In no event shall there be a reconsideration of a tentative

order issued under this division. If an objection is timely made, the matter shall be referred to a district hearing officer who shall set the application for a hearing in accordance with the rules of the industrial commission. The employer may obtain a medical examination of the employee and submit a defense medical report at any stage of the proceedings up to a hearing before a district officer.

(10) Where an award under division (A) of section 4123.57 of the Revised Code has been made prior to the death of an employee, all unpaid installments accrued or to accrue are payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee, and if there are no such children surviving, then to such other dependents as the ~~commission~~ bureau may determine.

(C) Payment of permanent partial disability pursuant to division (B) of section 4123.57 of the Revised Code in state fund and self-insured employer claims.

(1) The bureau will determine the payment of permanent partial disability pursuant to division (B) of section 4123.57 of the Revised Code for a loss by amputation or for a loss of use upon information in the claim file, such as on the first report of injury, or upon the motion of a party for such award. To determine the payment of the award, the bureau may review the medical evidence in the file, may request additional medical information from the parties, or may refer the injured worker for an examination by a physician designated by the bureau.

(2) The bureau shall enter an order on the payment of permanent partial disability pursuant to division (B) of section 4123.57 of the Revised Code for a loss by amputation or for a loss of use and shall notify the employee, the employer, and their representatives, in writing, of the order. The parties have a right to appeal the order pursuant to section 4123.511 of the Revised Code.

(3) Upon a final order for the payment of permanent partial disability pursuant to division (B) of section 4123.57 of the Revised Code for a loss by amputation or for a loss of use, the bureau shall calculate such award pursuant to the statutory schedule of division (B) of section 4123.57 of the Revised Code. The bureau shall calculate the award and shall pay the award to the injured worker in one payment.

(4) Where an award under division (B) of section 4123.57 of the Revised Code has been made prior to the death of an employee, all accrued compensation is payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee, and if there are no such children surviving, then to such other dependents as the bureau may determine.

12 - Month Medical Services & Safety Calendar

Date	February 2010	Notes
2/25/10	1. OAC 4123-3-15 claim procedure subsequent to allowance – amend rule to change claim inactivity designation and streamline rule	
	2. Create rule to outline injured workers' loss of use or loss by amputation payments pursuant to ORC 4123.57 (B)	
	3. MCO-Voc Rehab referral report update	
Date	**March 2010**	
3/25/10	1. Claim process education session	
	2. MCO-Voc Rehab referral report	
Date	**April 2010**	
4/29/10	1. Pharmacy overview	
	2. Medical & Service Provider Fee Schedule (1st read)	
Date	**May 2010**	
5/27/10	1. Medical & Service Provider Fee Schedule (2nd read)	
Date	**June 2010**	
6/17/10		
Date	**July 2010**	
7/28/10	1. Vocational Rehab fee schedule (1st read)	
Date	**August 2010**	
8/26/10	1. Vocational Rehab fee schedule (2nd read)	
Date	**September 2010**	
9/23/10	1. Inpatient Hospital Fee Schedule (1st read)	
Date	**October 2010**	
10/21/10	1. Inpatient Hospital Fee Schedule (2nd read)	
	November 2010	
11/18/10		
	December 2010	
12/15/10	1. Outpatient Hospital Fee Schedule (1st read)	

BWC Board of Directors

Medical Services and Safety Committee Agenda

Thursday, February 25, 2010
William Green Building
Level 2, Room 3
12:30 P.M. – 2:30 P.M.

Call to Order
Jim Harris, Committee Chair

Roll Call
Mike Sourek, scribe

Approve Minutes of January 21, 2010 meeting
Jim Harris, Committee Chair

Review and Approve Agenda
Jim Harris, Committee Chair

New Business/ Action Items

1. Motions for Board consideration:
   A. For First Reading
      1. Drug Free Safety Program (DFSP) Rule 4123-17-58
         Abe Al-Tarawneh, Superintendent, Division of Safety and Hygiene
         Tina Kielmeyer, Chief of Customer Services
      2. Claim Procedures subsequent to allowance Rule 4123-3-15
         Kim Robinson, Director of Policy
      3. Scheduled Loss Payment Rule 4123-3-37
         Tina Kielmeyer, Chief of Customer Services
         Kim Robinson, Director of Policy

Discussion Items

1. Update to MCO-Voc Rehab Referral Report
   Freddie Johnson, Director of Managed Care Services

2. Committee Calendar
   Jim Harris, Committee Chair

Adjourn
Jim Harris, Committee Chair

Next Meeting: Thursday, March 25, 2010
* Not all agenda items may have materials ** Agenda subject to change

4123-3-37 **Lump sum advancements.**

(A) The administrator of the bureau of workers' compensation may commute an award of compensation to a lump sum payment when the administrator determines that the advancement is advisable for the purpose of providing the injured worker financial relief or for furthering the injured worker's rehabilitation.

(1) The administrator may only grant a lump sum payment to an injured worker from an award of compensation made pursuant to section 4123.58 of the Revised Code~~ or from division (B) of section 4123.57 of the Revised Code~~.

(2) The administrator may grant a lump sum payment to a surviving spouse from awards of compensation made pursuant to sections 4123.59 of the Revised Code. However, the advancement shall not exceed the amount of death benefits payable to the surviving spouse over a two-year period.

(3) The industrial commission has exclusive jurisdiction over an application for a lump sum advancement for the payment of attorney fees incurred in the securing an award. The bureau shall refer such applications to the industrial commission to adjudicate.

(B) An injured worker shall file an application requesting a lump sum advancement with the bureau.

(1) The application shall be fully completed and notarized.

(2) The administrator shall review the application and utilize whatever methods the administrator determines to be appropriate, consistent with general insurance principles, to evaluate the claim for a lump sum payment.

(3) If the administrator determines that the lump sum application is advisable, the administrator shall determine the amount of the biweekly rate reduction and the terms of such reduction. The administrator shall fix a specific time for the reduction of the biweekly rate of compensation to repay the lump sum advancement. The administrator may include interest in the repayment schedule.

(4) The administrator shall issue an order approving or disapproving the application. If the application is approved, the order shall advise the injured worker of the amount of reduction of compensation and the terms of the lump sum advancement.

(C) Maximum rate reduction in compensation.

(1) ~~Except for advancements of awards of compensation made pursuant to division (B) of section 4123.57 of the Revised Code, no~~ No lump sum advancement shall be approved that will result in a rate reduction of more than one-third of the biweekly rate of compensation, except where the payment is for attorney's fees in accordance with section 4123.06 of the Revised Code.

(2) The administrator may approve more than one lump sum advancement in a claim, but shall not permit more than two concurrent lump sum advancements.

(3) Upon the repayment of the lump sum advancement in accordance with the terms of the order and agreement, the administrator shall remove the rate reduction due to the lump sum advancement and reinstate the injured worker's rate of compensation.

(D) The lump sum advancement warrant shall include the claimant or the surviving spouse as a payee, except where the check is for the payment of attorney's fees in accordance with section 4123.06 of the Revised Code, in which case the attorney shall be named as the only payee on the check.

Common Sense Business Regulation (BWC Rules)

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

Rule – 4123-3-37

Rule Review

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

   Citation: 4123.64

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

   What goal(s): **This rule outlines the processing of an request for the commutation of payments of compensation or benefits to one or more lump-sum payments pursuant to 4123.64.**

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 changes to the rules were reviewed with Ohio Association of Justice and OSBA Workers' Compensation Committee. The proposed rule was sent for additional stakeholder review and feedback on February16, 2010.

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.