



# Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers' Compensation.

Rule Contact Name and Contact Information:

Aniko Nagy (614) 466-3293

Regulation/Package Title (a general description of the rules' substantive content):

Chapter 4123-19 Self-insuring employer rules.

Rule Number(s): 4123-19-03, 4123-19-06, 4123-19-09, and 4123-19-16

Date of Submission for CSI Review: August 9, 2021

Public Comment Period End Date: August 27, 2021

Rule Type/Number of Rules:

New/ \_\_\_ rules

No Change/ \_\_\_ rules (FYR? \_\_\_)

Amended/ 4 rules (FYR? No)

Rescinded/ \_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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## **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a.  **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b.  **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c.  **Requires specific expenditures or the report of information as a condition of compliance.**
- d.  **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

## **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

***Please include the key provisions of the regulation as well as any proposed amendments.***

BWC has identified and is proposing several changes to Chapter 4123-19 rules in response to the Common Sense Initiative Office (CSI) initiative encouraging state agencies to remove references to outmoded means of communication and in-person interaction from their rules where appropriate.

Additionally, BWC is proposing to clarify several references in the rules to self-insuring employers “providing compensation, etc., directly” to the more precise “providing compensation and benefits directly.”

Proposed changes:

### **O.A.C. 4123-19-03**

• Removed the words “, signed in handwriting,” from paragraph (L)(2) of the rule as outdated and unnecessary.

### **O.A.C. 4123-19-06**

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- For clarity, removed “, etc.” and replaced with “and benefits” in paragraphs (A) and (D)(1) of the rule. The term “benefits” is defined in O.A.C. 4123-19-01(A).

**O.A.C. 4123-19-09**

- For clarity, removed “, etc.” and replaced with “and benefits” in paragraph (H) of the rule. The term “benefits” is defined in O.A.C. 4123-19-01(A).

**O.A.C. 4123-19-16**

- Revised paragraph (K)(4) of the rule to remove the words “written” and “signed” as outdated and unnecessary.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Authorized by 4121.12, 4121.121, 4121.13, 4121.30, 4123.05

Amplifies 4123.29, 4123.35, 4123.352, 4123.58

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No.

**5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A

**6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

These rules are a portion of the rules that govern self-insurance in Ohio’s workers’ compensation system and are required by ORC 4123.35. They are intended to inform Ohio employers of the requirements of self-insurance.

**7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

These rules do not lend themselves to measurement. The success of these rules is measured by the ability of workers’ compensation stakeholders to understand and follow the rules.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

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No.

### **Development of the Regulation**

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The proposed rules were sent for stakeholder feedback on July 8, 2021. The proposed rules were distributed to various individuals, including members of the Ohio Self-Insurance Association workgroups and the Ohio Manufacturers' Association.

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

No stakeholder feedback was provided.

- 11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

N/A

- 12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

These rules generally follow statutory mandates. For example, O.A.C. 4123-19-16, "Self-insured construction projects" is based on requirements in R.C. 4123.35(O). The statute provides the basic parameters of the regulation; these rules inform stakeholders of the procedures and policies the BWC will use to implement these regulations.

- 13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

Performance based regulations are not appropriate for the content of these rules.

- 14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The BWC is the only state agency regulating workers' compensation claims, and thus there is not another agency promulgating rules on these subjects.

- 15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

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The BWC will post the rules on <https://codes.ohio.gov/ohio-administrative-code>.

### **Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community; and**

The impacted community includes employers in the workers' compensation system. Specifically, the proposed rules impact employers that desire to self-insure and employers that are currently self-insured.

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance); and**

Generally, these rules are an alternative option for employers who do not wish to participate in the state insurance fund. An employer that becomes self-insured is responsible for paying an assessment to the self-insuring employers' guaranty fund and must pay claims costs dollar for dollar. An employer that desires to become self-insured must meet certain requirements, most of which are outlined in O.A.C. 4123-19-03. Many of the requirements are statutorily based.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

Any adverse impact is difficult to quantify and is mitigated somewhat by the elective nature of the self-insurance. Generally, an employer that chooses to become self-insured performs a risk analysis and determines that self-insurance is better for the employer financially.

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

These rules generally follow statutory mandates. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the BWC will use to implement these regulations. Therefore, the regulatory intent of these rules is justified by the need for the BWC to comply with statutory mandates.

### **Regulatory Flexibility**

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

No. Self-insuring employers are typically larger employers who have the financial ability and administrative resources to self-administer their workers' compensation claims.

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**19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

N/A

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

BWC rules and policies are available on <https://info.bwc.ohio.gov/wps/portal/gov/bwc>. Also, BWC has dedicated Self-Insured Department personnel available to assist stakeholders in answering workers' compensation inquiries concerning self-insurance.

**Where an employer desires to secure the privilege to pay compensation and benefits directly.**

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

The administrator shall review all financial records, documents, and data necessary to provide a full financial disclosure of the employer, including but not limited to, the balance sheets and a profit and loss history for the current year and the previous four years. The administrator shall consider whether the employer has demonstrated the financial ability to pay any and all claims obligations. Unless an applicant obtains waiver under paragraph (D) of rule 4123-19-03.1 of the Administrative Code, financial records submitted to the bureau must be audited by a certified public accountant, in accordance with generally accepted accounting principles, and shall include the certified public accountant's audit opinion.

- (1) The administrator may waive certain requirements of divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code pursuant to rule 4123-19-03.1 of the Administrative Code.
  - (2) The administrator shall not grant the status of self-insuring employer to the state, except that the administrator may grant the status of self-insuring employer to a state institution of higher education, including its hospitals.
- (B) The employer shall secure from the bureau proper application form(s) for completion. The completed application shall be filed with the bureau at least ninety days prior to the effective date of the employer's requested status as a self-insurer. The administrator may require that the application be accompanied by an application fee as established by bureau resolution to cover the cost of processing the application in accordance with section 4123.35 of the Revised Code. The application shall not be deemed complete until all required information is attached thereto. Prior to presentation to the administrator, applicable items listed in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code shall be made available to the bureau and shall be reviewed by the bureau.

- (C) The bureau shall accept only such application forms which provide answers to all

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questions asked and furnish such information as may be required.

(D) Return of the completed forms required by this rule and any additional information required by the bureau to process the employer's application should be submitted at least ninety days prior to the effective date of the employer's requested status as a self-insurer.

(1) If the administrator determines to grant the privilege of self-insurance, the bureau shall issue a "Finding of Facts" statement which has been prepared by the bureau, signed by the administrator, subject to all conditions outlined in paragraph (L)(3) of this rule.

(2) If the administrator determines not to grant the privilege of self-insurance, the bureau shall so notify the employer, whereupon the employer shall be required to continue to pay its full premium into the state insurance fund.

(E) All employers that have secured the privilege to pay compensation and benefits directly, will be required to make contributions as determined by the administrator to the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code, and, if an additional security is required by the bureau, in the amount or form that may be specified by the bureau. If the additional security is in the form of a surety bond, the bond shall be from a company approved by the bureau and authorized to do business in the state of Ohio by the Ohio department of insurance. The surety bond shall be in the form prescribed by the bureau. The penal amount of such additional security is to be fixed by the administrator.

(F) The surety bond or additional security furnished by the employer shall be for an amount and period as established by the bureau and may be periodically reviewed and reevaluated by the bureau. The surety bond or additional security shall provide on its face that the surety shall be responsible for the payment of all claims where the cause of action, as determined by the date of injury or date of occupational disease, arose during the liability of the surety bond or additional security. The liability under the surety bond or additional security and the rights and obligations of the surety shall be limited to reimbursement for the amounts paid from the surplus accounts of the state insurance fund by reason of the default of the self-insuring employer in accordance with division (B) of section 4123.82 of the Revised Code; however, in the event of such self-insuring employer's default, the bureau shall first seek reimbursement from the surety bond or additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code. Upon default of the self-insuring employer, it shall be the responsibility of the administrator to represent the interests of the state insurance fund and the self-insuring employers' guaranty fund. The administrator, on behalf

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of the self-insuring employers' guaranty fund, has the rights of reimbursement and subrogation and shall collect from a defaulting self-insuring employer, or other liable persons, all amounts the bureau has paid or reasonably expects to pay from the guaranty fund on account of the defaulting self-insuring employer.

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

A self-insuring employer or applicant shall designate one of its Ohio employees who is knowledgeable and experienced with the requirements of the Ohio Workers'

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

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

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

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

If a self-insuring employer fails to timely file its annual report of paid compensation, the bureau may estimate the amount of paid compensation and assess the employer based on this estimate pursuant to rule 4123-17-32 of the

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Administrative Code. If the employer subsequently provides the bureau with actual paid compensation figures, the bureau shall adjust the paid compensation and any assessment accordingly. A self-insuring employer that is no longer a self-insuring employer in Ohio and has failed to timely file a report of paid compensation shall be subject to this rule.

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

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

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

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

(b) Plan structure and financial stability for the medical management of claims;

(c) Procedures for the resolution of medical disputes between an employee and the employer, an employee and a provider, or the employer and a provider, prior to an appeal under section 4123.511 of the Revised Code;

(d) Upon the request of the bureau, provide a timely and accurate method of reporting to the administrator necessary information regarding medical and health care service and supply costs, quality, and utilization; and,

(e) Provide an employee the right to change health care providers.

(2) The employer shall promptly pay the fees of outside medical specialists to whom the commission or bureau shall refer claimants for examination or where the commission or bureau refers the claim file for review and opinion by such specialist except as provided by law in cases where the claim was subsequently disallowed. Such fees shall be paid within the time limits provided for payment of medical bills under paragraph (K)(5) of this rule.

(3) Every employer shall keep a record of all injuries and occupational diseases,

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including contested or denied claims, and shall report all claims with more than seven days of total disability or death, including contested or denied claims, to the bureau and to the employee or the claimant's surviving dependents in accordance with rule 4123-3-03 of the Administrative Code. Claims resulting in seven days or less of total disability shall be reported to the employee.

- (4) The employer shall provide to the claimant and upon request, shall file with the bureau or the commission, medical reports relating thereto and received by it from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease, or any injury or occupational disease for which a claim has been filed. The claimant shall provide to the employer and, upon request, shall file with the bureau or the commission, medical reports relating thereto and received from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease or any injury or occupational disease for which a claim has been filed. The claimant shall honor the employer's request for appropriate written authorization to obtain medical reports to the extent that such reports pertain to the claim.
- (5) Within thirty days after receipt of a hospital, medical, nursing, or medication bill duly incurred by the claimant, the employer shall either pay such bill, or if the employer contests any of such matters, shall notify the provider, the employee, and, only upon request, the bureau or commission in writing. Such written notice shall specifically state the reason for nonpayment. The employer's notification to the employee shall indicate that the employee has the right to request a hearing before the commission. If the matter is heard by the commission, the employer shall pay compensation and benefits due and payable under an order as provided by section 4123.511 of the Revised Code. If the employer allows a claim for benefits or compensation without a hearing, the employer shall pay such benefits or compensation no later than twenty-one days from acquiring knowledge of the claim or the claimant's filing of the C-84 form, whichever is later. The employer shall approve a written request for a change of physicians within seven days of receipt of such request that includes the name of the physician and proposed treatment. The employer shall approve or deny a written request for treatment within ten days of the receipt of the request. If the employer fails to respond to the request, the authorization for treatment shall be deemed granted and payment shall be made within thirty days of receipt of the bill.
- (6) The employer shall make its records and facilities available to the employees of the bureau at all reasonable times during regular business hours. A public employer shall make the reports required by section 4123.353 of the Revised

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Code available for inspection by the administrator and any other person at all reasonable times during regular business hours.

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

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

- (10) The employer shall inform a claimant, and the bureau, in writing, within thirty days from the filing of the claim, as to what conditions it has recognized as related to the injury or occupational disease and what, if any, it has denied.

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The same timeframe shall apply when the employer rejects a medical only claim.

- (11) The employer shall post notices of its self-insuring status indicating the location for the filing of a claim and the job title and department of the employees designated by the employer to be the person or persons responsible for the processing of workers' compensation claims.
  - (12) A public employer, except for a board of county commissioners described in division (G) of section 4123.01 of the Revised Code, a board of a county hospital, or a publicly owned utility, who is granted the status of self-insuring employer pursuant to section 4123.35 of the Revised Code shall comply with the section 4123.353 of the Revised Code.
  - (13) A self-insuring employer is prohibited from entering into a professional employer organization agreement as defined in section 4125.01 of the Revised Code as a client employer.
- (L) If a state insurance fund employer or a succeeding employer, as described in rule 4123-17-02 of the Administrative Code, applies for the privilege of paying compensation and benefits directly, by transferring from state fund to self-insurance, the actuary of the bureau shall determine the amount of the liability of such employer to the bureau for its proportionate share of any deficit in the fund. To determine an employer's liability under this rule, the actuary of the bureau shall develop a set of factors to be applied to the pure premium paid by an employer on payroll for a seven - year period, as described in this paragraph. The factors shall be based on the full past experience of the commission and bureau as reflected in the most recent calendar year end audited combined financial statement of the commission and bureau, and shall also accommodate any projected change in the financial condition of the fund for the current calendar year, or any additional period for which an audited combined financial statement is unavailable. The factors shall be revised annually effective July first based on the most recent calendar year audited combined financial statement and the projected change in the financial condition of the fund in the current calendar year or any additional period for which an audited combined financial statement is unavailable. The annually revised factors shall be adopted by rule 4123-17-40 of the Administrative Code, and filed with the secretary of state and the legislative service commission at least ten days prior to July first of each year. Factors effective July first of each year shall apply to all applications for self-insurance filed on or after July first of that year through June thirtieth of the following year. The revised factors shall be applied to the pure premium paid by the employer on payroll for the seven calendar accident years ending December thirty-first of the year preceding the year in which the factors are adopted under rule 4123-17-40 of the Administrative Code. In the

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

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

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self-insuring employers' guaranty fund under section 4123.351 of the Revised Code, submit a performance surety bond or additional security, if required by the bureau, and estimated final payroll report as a state fund risk, all within thirty days of the date of the mailing of the self-insured certificate.

- (4) The final adjustments of all premiums due the state fund for the final payroll reports and final bureau audit (if any), as well as the pending protests letters, applications for handicap reimbursement, or other requests affecting the risk's state fund experience as specified in paragraph (L)(2) of this rule, shall all be settled and paid within six months from the date of transfer from state fund to self-insuring status. Employer's records must be made available promptly for final audit which must also be completed within six months from the date of the transfer from state risk to self-insurance.
  
- (M) If there is any change involving additions, mergers, or deletions of entities or ownership changes of a self-insuring employer, which would materially affect the administration of the employer's self-insuring employer program or the number of employees included in such program, the employer shall notify the bureau's self-insured department within thirty days after the change occurs. Based upon the information provided or additional information requested by the bureau, the bureau will determine the effect of the change on the employer's self-insuring employer status, the adequacy of the employer's contribution to the self-insuring employers' guaranty fund, and the need for additional security.
  
- (N) If a public employer granted the privilege of self-insurance elects to provide coverage for volunteers and probationers performing services for the political subdivision, the employer shall include such volunteers and probationers as employees to be covered under the self-insurance policy. A public employer's coverage of a "work-relief employee" under Chapter 4127. of the Revised Code shall be included in the public employer's self-insurance policy.
  
- (O) If a self-insuring employer or applicant elects to secure excess loss coverage which undertakes to indemnify a self-insuring employer against all or part of such employer's loss as provided for in division (B) of section 4123.82 of the Revised Code, that self-insuring employer or applicant shall:
  - (1) Name the bureau as a beneficiary to the excess loss coverage contract in the event the bureau takes over administration and payment of the claims of the self-insuring employer or applicant;
  
  - (2) Provide a complete copy of the excess loss coverage contract, including the declaration page, to the bureau's self-insured department; and

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- (3) In the event of default by the self-insuring employer or applicant, the excess loss coverage must indemnify the bureau for all compensation, benefits, and disabled workers' relief fund costs incurred on claims covered by the excess loss coverage contract.
  
- (P) If a self-insuring employer or applicant elects to secure excess loss coverage which undertakes to indemnify a self-insuring employer against all or part of such employer's loss as provided for in division (B) of section 4123.82 of the Revised Code, this election cannot be used to satisfy any security requirements of self-insurance as provided in sections 4123.35 and 4123.351 of the Revised Code.

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**Procedures for revocation of self-insuring status.**

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

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

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hearing.

- (D) At the hearing the testimony given shall be taken by a court reporter and copies of the transcript of such testimony shall be furnished to the self-insuring employer, the complaining claimant, their representatives, the administrator and the members of the self-insured review panel or the self-insuring employers evaluation board.
- (1) Should the self-insured review panel find that the self-insuring employer has materially violated any parts of this rule or is incapable of operating a self-insuring program, or refuses to conform to the rules and regulations of the industrial commission and bureau, then the administrator will forthwith issue a revocation of authority to pay compensation, ~~etc.~~ and benefits, directly.
  - (2) Should the self-insuring employers evaluation board recommend to the administrator that an employer's privilege of self-insurance be revoked, the administrator shall promptly and fully implement such recommendation without further hearing.
  - (3) An employer that has been revoked pursuant to paragraph (D)(1) or (D)(2) of this rule shall be required to pay forthwith its eight months' advance estimated premium into the state insurance fund.
- (E) The bureau may, at its discretion and after proper hearing, revoke the self-insuring status of a unit of a parent company when the evidence presented at the hearing clearly shows that the unit is operating at a different location from the parent company, and its actions causing the revocation were not directed nor authorized by the parent company.

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

- (A) The bureau of workers' compensation shall receive all complaints concerning any employer engaged in paying compensation and benefits directly to its employees. The bureau shall transfer to the self-insuring employers evaluation board only those complaints which are not resolved. An employer shall respond in writing to a complaint within fourteen days of receipt thereof, and the employer's response shall be made a part of the complaint file.
- (B) The administrator of workers' compensation shall investigate and process all complaints against a self-insuring employer through the bureau's self-insured department. However, the bureau may dismiss a complaint based upon the employer's action or lack of action with respect to events that occurred more than two years prior to the filing of the complaint, unless the facts could not have been reasonably known to the claimant.
- (C) The bureau shall maintain a file by employer of all complaints that relate to the employer, together with any information filed by the employer as to such complaints. A copy of all complaints shall become a part of the self-insuring employer's record file and shall be available at the time of renewal consideration. The bureau shall evaluate each complaint and take appropriate action as follows:
  - (1) If the bureau records for such employee does not contain full information as to the matter which is the subject of the complaint, the bureau may attempt to obtain such information by correspondence with the self-insuring employer, the claimant, and their authorized representatives, if any.
  - (2) The bureau may also audit the program of the employer in the manner provided in section 4123.35 of the Revised Code.
- (D) Following receipt of all necessary information, including bureau records, correspondence from the employee and the employer, or an audit by the bureau, the bureau may dismiss the complaint as invalid or find that the complaint has been resolved. Any unresolved complaint against a self-insuring employer shall be referred to the board for further action in accordance with the provisions of rule 4123-19-13 of the Administrative Code. If the bureau determines that a complaint is invalid or resolved and decides not to present the complaint to the board, the claimant may request that the complaint be presented to the administrator or the board for further consideration. If the bureau determines that a complaint is valid, a self-insuring employer may request that the complaint be presented to the administrator or the board for further consideration.
- (E) All requests by claimants or self-insuring employers in accordance with paragraph (D) of this rule shall be filed within fourteen days of receipt of the bureau's decision. Failure to timely file the request shall be grounds for dismissal of the request, and the bureau's decision shall be final.
- (F) Complaints referred to the bureau as provided in this rule shall be retained in the employer's file for a period of four years from the date of resolution.

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- (G) No employer that elects to pay compensation directly shall harass, dismiss or otherwise discipline an employee for making a complaint. Upon receipt of this information that such harassment, dismissal or other disciplinary action has been taken, the bureau shall assign the matter for hearing pursuant to the provisions of rule 4123-19-13 of the Administrative Code before the members of the board. If the board finds that such employer is guilty of harassing, dismissing or otherwise disciplining the claimant for making the complaint, the board shall levy a reasonable financial penalty under the circumstances as the board deems appropriate, payable by the employer to the surplus fund.
- (H) Repeated violations of this rule shall be grounds for revocation of the employer's privilege to pay compensation, ~~etc.~~ [and benefits](#), directly.

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**Self-insured construction projects.**

(A) As used in this rule:

- (1) "Responsible self-insuring employer" or "responsible employer" means the self-insuring employer or the public school employer that enters into a construction contract and applies for permission to self-insure the construction contract. The responsible employer is the entity responsible for the cost of the construction project and generally will be the owner of the project. The responsible employer is the payor under the contract. "Responsible self-insuring employer" or "responsible employer" may include a self-insuring general contractor or construction manager whose principal source of business is the execution of construction projects.
  - (2) "Public school employer" means an employer defined in division (R) of section 4123.35 of the Revised Code that enters into a construction contract exceeding twenty five million dollars and applies for permission to self-insure the construction contract, whether or not the employer is a self-insuring employer.
  - (3) "General contractor" means a self-insuring employer that has entered into a contract with an owner to perform more than fifty per cent, by value, of the work on a construction project.
  - (4) "Construction manager" means a self-insuring employer that has entered into a contract with an owner to provide substantially the same services described in division (A) of section 9.33 of the Revised Code in connection with a construction project. Regardless of any contrary terms of section 9.33 of the Revised Code, for purposes of this rule, the term "construction manager" is not limited to public projects and may apply even if the construction manager also performs construction work on the project.
  - (5) "Contracting employer" or "subcontracting employer" means any employer, whether state fund or self-insured, that has contracted either directly with a responsible self-insuring employer or with a contracting or subcontracting employer to perform construction services on the construction project. The contracting employer is the payee under the contract, except for where the contracting employer has subcontracted with another contracting employer.
- (B) The purpose of this rule is to establish standards by which the administrator of workers' compensation may permit a responsible self-insuring employer to self-insure a construction project entered into by the responsible self-insuring employer pursuant to division (O) of section 4123.35 of the Revised Code.

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- (C) The administrator's authority to grant self-insured status for a construction project is permissive. The bureau of workers' compensation may establish criteria for granting self-insured status to ensure the financial stability and claims continuity of the workers' compensation program. The burden of proof is on the responsible self-insuring employer to satisfy the requirements of divisions (O), (P), and (Q) of section 4123.35 of the Revised Code, including designation of a safety professional and employment of an ombudsperson for the construction project, and such other requirements as the administrator may establish by this rule or other policy for granting permission to self-insure a construction project.
- (D) A responsible employer filing an application to self-insure a construction project shall be a self-insuring employer under the Ohio workers' compensation statutes, except that a public school employer may be a state fund employer. A public school employer shall be self-insured for the construction project only and shall maintain state fund coverage for its employees.
- (E) In order for a responsible employer to be considered for self-insurance under division (O) of section 4123.35 of the Revised Code, the responsible employer must submit an application including, but not limited to, the following information:
- (1) Dates the construction project is scheduled to begin and end, including the site(s) of the construction project;
  - (2) The estimated cost of the project;
  - (3) The contracting and subcontracting employers whose employees are to be self-insured by the responsible employer, including estimated payroll (any changes to the list of contracting and subcontracting employers during the duration of the project shall be sent to the bureau within two business days);
  - (4) The provisions of a safety program specifically designed for the project;
  - (5) A statement as to whether a collective bargaining agreement governing the rights, duties, and obligations of each of the parties to the agreement with respect to the project exists between the self-insuring employer and a labor organization.
  - (6) All applications must be submitted ninety days prior to the desired effective date.

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

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- (F) If the administrator approves the application, the administrator shall mail to the responsible self-insuring employer a certificate granting the privilege to self-insure the construction project. Upon approval, the responsible employer is responsible for the administration and payment for the life of the claim of all claims under Chapters 4121. and 4123. of the Revised Code for the employees of any contracting employers and subcontracting employers covered under the certificate who receive injuries or are killed in the course of and arising out of employment on the project, or who contract an occupational disease in the course of employment on the project.
- (G) The responsible employer is entitled to all of the protections provided under Chapters 4121. and 4123. of the Revised Code with respect to the employees of the contracting and subcontracting employers covered under the certificate as if the employees were employees of the responsible employer.
- (H) The contracting and subcontracting employers included under the certificate are entitled to the protections provided under Chapters 4121. and 4123. of the Revised Code with respect to the contracting and subcontracting employer's employees who are employed on the construction project which is the subject of the certificate.
- (I) The contracting and subcontracting employers included under the certificate shall identify in their payroll records for audit and compliance purposes the employees who are considered the employees of the responsible employer listed in that certificate for purposes of Chapters 4121. and 4123. of the Revised Code, and the amount that those employees earned from employment on the project that is subject to the certificate. The contracting or subcontracting employer shall exclude the payroll for its employees under the construction project from its payroll report and the administrator shall not consider the payroll when determining those contracting or subcontracting employers' premiums or assessments required under Chapters 4121. and 4123. of the Revised Code.
- (J) The responsible employer shall include in the amount of paid compensation it reports pursuant to division (L) of section 4123.35 of the Revised Code, the amount of paid compensation that the responsible employer paid pursuant to division (O) of section 4123.35 of the Revised Code.
- (K) For a public school employer, the bureau may grant the privilege of participating as a self-insuring employer for a construction project under this rule on a one year basis, and shall consider the project for renewal annually pursuant to rule 4123-19-08 of the Administrative Code.
  - (1) Additional security.

- (a) A public school employer shall be required to make contributions as determined by the administrator to the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code. In addition, the employer shall provide additional security as required by the bureau in the amount or form that may be specified by the bureau. At a minimum, the additional security shall be one hundred and twenty-five per cent of the expected workers' compensation losses of the construction project as determined by the bureau. The security shall be in force on or before the administrator grants the privilege to self-insure the construction project. In the event the initial calculation of expected losses is shown to be less than the actual losses, additional security shall be provided as required by the bureau.
- (b) The public school employer shall assign the additional security required by this rule to the bureau for the benefit of the disabled employees or the dependents of killed employees of the public school employer for the construction project. In addition, the security shall be applied to disabled workers' relief fund payments to employees of the construction project and administrative expenses of the bureau in the management of such claims of employees of the construction project.
- (c) Notwithstanding the authority of the bureau to seek reimbursement from the self-insuring employers' guaranty fund, or from surety, excess loss insurance, and any other sources provided by the employer, the legal obligation to pay the costs of injuries, occupational diseases, and deaths incurred under the construction project remains with the public school employer.

(2) Disabled workers relief fund.

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

(3) Excess loss insurance.

A public school employer may purchase excess loss insurance subject to the provisions concerning excess loss insurance in rule 4123-19-03 of the Administrative Code. In the event the excess loss insurance is purchased, all rights to recovery from that insurance must be assignable to the bureau in the event of bankruptcy of the public employer school facility employer.

(4) Reducing the costs of the construction project.

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

(5) Safety plan.

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

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

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

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- (g) Collect documentation of information, such as hazard inspections, audits of the "HASP," injury/illness data, incident investigations, industrial hygiene surveys, maintenance records, and job hazard analyses.

(6) Organizational plan criteria.

The public school employer shall:

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

(7) Ombudsperson duties.

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

- (a) Have experience in workers' compensation or the construction industry, or both.
- (b) Communicate with and provide information to employees who are injured in the course of, and arising out of, employment on the construction project.

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- (c) Investigate the status of a claim upon the request of an employee.
- (d) Provide information to claimants, third party administrators, employers, and other persons in protecting their rights under the workers' compensation laws and rules.