

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Industrial Commission

Regulation/Package Title: Five Year Rule Review:
Chapter 4121-3 – Claims Procedures & Chapter 4121-15 – Code of Ethics

Rule Number(s): 4121-3-09, 4121-3-10, 4121-3-13, 4121-3-15, 4121-3-19, 4121-3-26,
4121-3-32, 4121-3-34, 4121-15-10

Date: August 6, 2012

Rule Type:

- New
 Amended

- 5-Year Review
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

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

Chapter 4121-3 of the Administrative Code contains rules pertaining to claims procedures at the Industrial Commission. Rule 4121-15-10 is one of the rules of the Code of Ethics of the

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Industrial Commission. The Commission is recommending amendments to seven rules and is recommending that two rules be unchanged. The Commission recommends the following amendments to seven rules:

Rule 4121-3-09 – Conduct of hearings before the commission and its staff and district hearing officers

- Paragraph (A)(4)(a) – The Commission proposes that the rule be amended to provide that when an injured worker submits a signed medical release as required by division (B) of section 4123.651, upon written request made by the employer, the injured worker shall provide a list of the medical providers that have examined or treated the injured worker for any conditions that are related causally or historically to the conditions relevant to the injured worker’s claim.
- Paragraph (A)(4)(b) – The Commission proposes that the rule be amended to provide that upon the request of the employer, the hearing administrator shall contact the parties to determine whether the second medical examination is essential to the defense of the claim by the employer. The proposed amendment sets forth the procedure by which the Industrial Commission will make determinations in disputed cases.
- Paragraph (A)(6)(b) – The Commission proposes that the rule be amended to provide that the employer shall promptly inform the injured worker, and in claims where the injured worker is represented, the injured worker’s representative, as to the time and place of the medical examination that is requested by the employer in a situation where an employer asserts that an additional medical examination by a doctor of the employer’s choice is essential to the defense of the claim by the employer. The amendment also provides upon request by the injured worker or the injured worker’s representative in claims where the injured worker is represented, the questions and information provided to the physician, and the reasoning for such additional examination be provided to the injured worker or the injured worker’s representative in claims where the injured worker is represented.
- Paragraph (A)(6)(b) – In addition, the Commission proposes that the rule be amended to provide that upon receipt of a written request of the employer, the hearing administrator shall contact the parties to the claim and determine whether the second medical examination is essential to the defense of the claim by the employer. The remainder of amendment at paragraph (A)(6)(b) sets forth the procedure will take place if a party is dissatisfied with the compliance letter issued by the hearing

administrator under paragraph (A)(6) and provides due process for timeframes for filing objections.

- Paragraph (A)(7) - The Commission proposes that the rule be amended to provide that the longstanding policy of the Industrial Commission that authorized representatives of the parties may not be present at a medical examination conducted at the request of the Commission under 4123.53 or at medical examinations conducted by physicians that are selected by employers pursuant to 4123.651(A) be incorporated into the rule.
- Paragraph (A)(7) – The Commission proposes that the rule be amended to incorporate the existing Commission policy into rule 4121-3-09 that that no person or party other than the Industrial Commission employee will communicate with the physician examining or reviewing on behalf of the Industrial Commission and that authorized representatives of the parties may not be present at a medical examination conducted by a treating or consulting physician of the injured worker.
- Paragraph (C)(10) - The Commission proposes that the rule be amended to provide that copies of final decisions issued by the Industrial Commission and its hearing officers shall be sent by regular U.S. mail unless the party or the party’s authorized representative has opted not to receive decisions through the U.S. mail and elected to receive decisions electronically. Whether the decisions are provided through the U.S. mail or electronically it will be a rebuttable presumption that the copies of decisions sent by the Commission were sent on the mailed date set forth in the Commission order.
- Paragraph (K) - To set forth the contents of a docket sheet that is posted by the Commission in lobbies of Commission offices that hold hearings as 4121.06 provides the Commission shall adopt rules on the publication of a docket.

Rule 4121-3-10 – Lump sum payments for attorney’s fees for securing an award

Paragraph (D) - The proposed amendment is to place into rule 4121-3-10, new paragraph (D), that sets forth the existing policy of the Bureau and the Commission that when the Commission approves or modifies an application for the lump sum payment of attorney’s fees in a State Insurance Fund claim, the claim shall be referred to the Administrator to determine the amount of the biweekly rate reduction and to set the repayment schedule for the lump sum payment.

Rule 4121-3-13 – Disputed self-insuring employers’ claims

Paragraph (C) - The proposed amendment provides that in the event that the self-insuring employer fails to respond to a request for compensation and benefits made by an injured worker within thirty days of such a request, (the current rule provides twenty-eight days), or upon receipt of a notice of a dispute or disagreement that concerns a contested claims matter, the Commission is to schedule the contested claims matter for hearing. The amendment is proposed to be consistent with Bureau of Workers’ Compensation rule 4123-19-03(K).

Paragraph (F) - Rule 4121-3-13 is also proposed for amendment to provide that the information requested of self-insuring employers that is currently set forth in paragraph (E) of rule 4121-3-13 is not to be provided to the Commission again or to the injured worker or the injured worker’s representative if the information was previously filed with the Commission or the Bureau of Workers’ Compensation, and is already part of the claim file folder within the possession of the Bureau of Workers’ Compensation.

Rule 4121-3-15 – Percentage of permanent partial disability

Paragraphs (C) and (D) - The proposed amendment provides that should an employer schedule an examination of an injured worker for the determination of percentage of permanent partial disability compensation, the report of medical examination is to be submitted to the injured worker’s representative if the injured worker is represented or to the injured worker if the injured worker is not represented.

Rule 4121-3-19 – Form reference

It is recommended that the rule be retained without change.

Rule 4121-3-26 – Effect of rules

It is proposed that the rule be amended to reflect that the rules in Chapter 4121 of the Administrative Code are Commission rules.

Rule 4121-3-32 – Temporary disability

- Paragraph (A)(6) - The proposed amendment provides that the definition of “job offer” currently found within Rule 4121-3-32 be revised to include that the written job offer is to identify the position offered and shall include a description of the duties required of the position and clearly specify the physical demands of the job.
- Paragraph (C) - The rule is also proposed to be amended to provide that in those cases where an injured worker is scheduled for a medical examination by the Bureau of Workers’ Compensation and where the report of the medical examination opines that the medical impairment resulting from the allowed conditions in the claim permanently prohibits the injured worker from performing sustained remunerative employment, the matter would be referred to the Industrial Commission hearing

administrator to schedule a pre-hearing conference to determine whether a tentative order awarding permanent total disability compensation should be issued by the Commission.

Rule 4121-3-34 – Permanent total disability

- Paragraph (C)(1) - The proposed amendment provides that when an injured worker files an application for permanent total disability compensation and the same is accompanied by medical evidence as required under the current rule 4121-3-34, where the Commission determines, at the time the application for permanent total disability compensation is filed, that the claim file contains the required medical evidence, the application for permanent total disability shall be adjudicated on its merits absent withdrawal of the application for permanent total disability compensation.
- Paragraph (C)(6)(a) and Paragraph (C)(7) - Rule 4121-3-34 is also proposed to be amended to reflect the recommended amendment in 4121-3-32(C), as far as when a prehearing conference is to be set by a hearing administrator to include when there is a referral to the hearing administrator under the provisions of 4121-3-32(C).

Rule 4121-15-10 – Standards of conduct for adjudicators

Rule 4121-15-10 is recommended for no change.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule 4121-3-09

R.C. 4121.30, 4121.31, 4121.36, 4123.651 and 4123.53

Rule 4121-3-10

R.C. 4121.30, 4121.31, and 4123.06

Rule 4121-3-13

R.C. 4121.30, 4121.31, 4121.36

Rule 4121-3-15

R.C. 4121.30, 4121.31, 4121.36, 4123.57

Rule 4121-3-19

R.C. 4121.30, 4121.31

Rule 4121-3-26

R.C. 4121.30, 4121.31

Rule 4121-3-32

R.C. 4121.30, 4121.31, 4123.56

Rule 4121-3-34

R.C. 4121.30, 4123.58, 4121.32

Rule 4121-15-10

R.C. 4121.122, 4121.30, 4121.31, and 4121.36

- 3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

No.

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

Not applicable.

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

The proposed amendments to the rules set forth hearing procedures that apply to hearings held by the Industrial Commission in contested workers' compensation claims. Without rules of procedure hearings would tend not to be fairly conducted or uniformly conducted and there no clear expectation of responsibilities on the parties of a claim and their representatives concerning hearing procedures prior to hearing, as well as during hearing.

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

The Commission has ongoing monitoring of the hearing process.

Development of the Regulation

- 7. 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 Industrial Commission has a Rules Advisory Committee that has been in existence for many years. The Rules Advisory Committee is made up of representatives of stakeholder groups including the Ohio Manufacturers Association, the Ohio Association of Self-Insuring Employers, the Ohio Chamber of Commerce, the Ohio AFL-CIO, the Claimant's Bar,

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represented by members of the Association of Claimants' Counsel. In addition, the Commission provided copies of the proposed amendments to the Ohio Association for Justice, an association that represents injured workers in Ohio via e-mail on two occasions and requested input. The Ohio Association of Justice is to meet with the Commission in early August 2012. The Commission e-mailed the suggested changes to the Rules Advisory Committee prior to meeting with the Commission on several occasions. The members of the Rules Advisory Committee met with Commission staff on February 21, 2012, April 18, 2012, and May 30, 2012, and offered suggestions and comments on the proposed revisions.

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

Input was obtained from the stakeholder groups which resulted in revisions to the rules. The suggestions from the Rules Advisory Committee were generally submitted on the basis of consensus of the members of the Rules Advisory Committee.

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

Not applicable.

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

The agency did not consider regulatory alternatives for the reason that the stakeholder groups that represent employers and injured workers at the Industrial Commission agree that the Commission should amend the rules that are listed. The desire was not to eliminate rules of procedure, but to clarify and make more definite the existing rules of procedure to achieve a fairer hearing process and to avoid hearing by ambush and surprise.

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

Not applicable.

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

The Industrial Commission is the only state agency that has responsibility to adjudicate contested workers' compensation claim matters. There is no other state agency that is similar to the Industrial Commission, in terms of the functions and duties of the Industrial Commission. Commission staff meets with the Bureau of Workers' Compensation staff on a regular basis and review both Commission proposed rule actions and Bureau of Workers' Compensation proposed rule actions to avoid conflicting regulations with the Bureau.

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

The implementation of the regulations are through staff training at the Industrial Commission. In addition ongoing regional training of hearing officers takes place every quarter. The Commission will inform representatives of injured workers and employers of the changes through the various organizations representing injured workers and employers. The Commission schedules statewide hearing officer meetings in which several hundred representatives of injured workers and employers will be present where updates on Commission rules will be provided. Information on both proposed rules, as well as final rules are noted on the Commission’s webpage, Facebook, and the Adjudicator. The Commission also notifies representatives of parties of rule changes through e-mail communication.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

The proposed rule changes will not impact employers or injured workers directly, but will impact representatives of injured workers and employers that represent parties before the Industrial Commission, but not adversely.

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

It is not believed that the proposed amended rules will be an adverse impact on business. There are no fines or fees for failure to comply with the proposed amended rules. The proposed amended rules do not require a license, permit, or prior authorization to engage and operate a line of business. The proposed amended rules do not impose a criminal penalty, civil penalty, or other sanction, or create a cause of action for failure to comply with the terms of the rules. The proposed amended rules do not require specific expenditures. Non-compliance by representatives of parties may result in a delay in the hearing process which could increase transactional costs.

Proposed amended rule 4121-3-13 requires that self-insuring employers (employers that employ more than 500 employees) those employers that self-insure for workers’ compensation purposes, file with the Commission certain information set forth within rule 4121-3-13, prior to the date of hearing of a contested claims matter that will be

heard by the Commission concerning a self-insuring employer claim. The proposed amendment to rule 4121-3-13 would reduce the impact on self-insuring employers by providing that the information required to be filed with the Commission that is set forth in the rule is not to be provided to the Commission in claims where the information has been previously filed by the self-insuring employer. The proposed amended rule would result in a reduction of cost on a self-insuring employer and the self-insuring employer's authorized representative by eliminating duplicate filings.

c. Quantify the expected adverse impact from the regulation.

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

The impact cannot be quantified in dollars, hours to comply, or other factors. Many of the proposed amended rules may tend to reduce disputes on claims procedure that have in the past led to additional hearing. Therefore, it is asserted that the proposed amendments would tend to reduce transactional costs on employers and injured workers.

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

The Commission determined that the suggestions/recommendations by the Rules Advisory Committee be incorporated into the proposed amendments to result in a fairer hearing process, as well as setting uniform procedures for those representatives of employers and injured workers that appear at hearings at the Industrial Commission.

Regulatory Flexibility

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

The proposed rules do not provide exemptions specifically addressed to small business. The focus of the amended rules is on hearing procedures for the parties and representatives of injured workers and employers. Proposed amended rule 4121-3-13 impacts self-insuring employers, which are the largest employers in Ohio with over 500 employees. However, the proposed amendment to 4121-3-13 reduces costs to self-insuring employers, as the rule is an attempt to reduce duplicate filings by self-insuring employers.

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

Not applicable.

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

Small business employers and representatives of small business employers can access the rules of procedure through the Commission's website. The Commission's office of Customer Service is available to address inquiries that may be raised by the parties in the claim, including small business employers, concerning the hearing process and Commission rules. Most of the contested claims matters that result in hearings held before the Commission concern claims where employers are represented by a law firm or by a third party administrator.