

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Industrial Commission

Regulation/Package Title: Amended Rules: 4121-3-18, 4121-15-03

Rule Number(s): 4121-3-18, 4121-15-03

Date: May 19, 2017

**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Rescinded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.*

In brief, the rules under Chapter 4121-3 set forth the claims procedures of the Ohio Industrial Commission. The Commission is recommending an amendment to 4121-3-18 in order to be consistent with another agency rule, 4121-3-09. Specifically, the current version of 4121-3-18 provides that there is a rebuttal presumption that an order is electronically received the

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next commission business date after the date the e-mail notification was sent by the commission. This language is inconsistent with 4121-3-09(C)(10), which provides that the rebuttable presumption begins to run from the mailed date listed on the record of proceedings. The Commission proposes to amend 4121-3-18 to change the rebuttable presumption to within three days of the date of mailing of the order, unless the day of receipt is a Saturday, Sunday, legal holiday, or a day the commission offices are closed, in which event the order will be presumed received on the next succeeding commission day of business which is not a Saturday, Sunday, legal holiday, or a day the commission offices are closed.

Ohio Adm.Code 4121-15-03 provides the standards of conduct for employees of the Industrial Commission, Bureau of Workers’ Compensation, as well as the board of directors of the Bureau of Workers’ Compensation. The Commission is recommending the replacement of the phrase, “anything of value” from the definitions in 4121-15-03(B)(2)(a) with the word “value” and the inclusion of a definition of “compensation” in an effort to be consistent with the Bureau of Workers’ Compensation companion rule.

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

Rule Number	Authorizing Statute
4121-3-18	4121.30, 4121.31
4121-15-03	4121.122

**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)?**

Ohio Adm.Code 4121-3-18 sets forth the procedures for workers’ compensation hearings before the Ohio Industrial Commission. The rule provides for consistency in the hearing process and provides clear expectations regarding the parties’ responsibilities before, during and after the hearings.

Ohio Adm.Code 4121-15-03 provides the standards of conduct for the employees of the Industrial Commission and Bureau of Workers' Compensation. The rule provides guidance on prohibited conduct and conflicts of interest.

**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 Ohio Industrial Commission has a Rules Advisory Committee consisting of representatives from the Ohio Manufacturers Association, the Ohio Association of Self-Insuring Employers, the Ohio Chamber of Commerce, the Ohio AFL-CIO, the Injured Worker's Bar, members of the Association of Claimant's Counsel and BWC attorneys. The Commission e-mailed the proposed changes to the Rules Advisory Committee prior to meeting with the Commission to discuss these rules. The members of the Rules Advisory Committee met with the Commission staff on April 18, 2017 and offered suggestions and comments on the rules under review.

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

The Commission received input from the Rules Advisory Committee and determined that Ohio Adm.Code 4121-3-18 and 4121-15-03 should be amended to provide further consistency and clarification in the hearing process and to address the concerns raised by the group.

**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 Ohio Industrial Commission does not consider alternative regulations for the reason that the stakeholder groups that represent both the employers and injured workers agree on the proposed amendments.

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**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 Ohio Industrial Commission is the only state agency that has the responsibility to adjudicate contested workers' compensation claims matters. There is no other state agency that is tasked with the same functions and duties of the Commission. Commission staff members meet with the Bureau of Worker's Compensation staff monthly to review both Commission proposed rule actions and Bureau of Workers' Compensation proposed rule actions to ensure that the two agencies' rules do not conflict.

**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 Commission will educate its hearing officers and hearing administrators on the changes through its Legal Resource Center and its ongoing regional training. The Commission schedules statewide hearing officer meetings in which several hundred representatives from both parties are present and an update on our rules is provided. Information regarding 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 impact injured workers and employers, but not adversely.

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

The Commission believes that the proposed amended rules will not have an adverse impact on business. These rules do not provide for fines or fees for failure to comply with the proposed amended rules. The proposed amendments 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

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representatives of parties may result in a delay in the hearing process that could increase transactional costs; however, these costs would be minimal and the Commission would bear that cost.

**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 cannot be quantified in dollars, hour to comply, or such factors.

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

Not applicable.

**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 businesses. The focus of the amended rules is to provide a fair hearing process for the parties and their representatives. Small businesses will benefit from a fair and consistent hearing process.

**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 the Commission’s rules. Most of the contested claims matters that result in hearing held before the Commission concern claims where employers are represented by a law firm or by a third party administrator.