

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Marine Industry Fund Rules

Rule Number(s): 4123-20-01 (nc), 4123-20-02 (amend), 4123-20-03 (amend),
4123-20-04 (amend), 4123-20-05 (nc), 4123-20-06 (nc), and 4123-20-07 (nc).

Date: 4/2/2012

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☐ Rescinded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.

The Marine Industry Fund provides voluntary coverage to Ohio employers with employees who work on or about navigable waters, as required by the Federal Longshoremen and Harbor Workers' Act. Ohio employers in the marine industry may choose to purchase the

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insurance from BWC, from a private carrier, or self insure. At the end of Fiscal Year 2011, there were approximately 120 subscribers to Ohio's Marine Industry Fund.

BWC is performing the five year rule review of these rules pursuant to R.C. 119.032. BWC is retaining four rules without change, and proposing changes to three rules.

The three rules are being amended to place the reporting and payment of premium for the Marine Industry Fund on the same schedule as the State Insurance Fund and placing all policies on the same renewal schedule. Employers will continue to pay for this insurance coverage in advance of the coverage period and not in arrears.

Rule 4123-20-02 establishes the rules for obtaining insurance coverage under the Marine Industry Fund: the effective date of such coverage, expiration date, and lapse in coverage.

Rule 4123-20-03 establishes requirements for the prepayment of premiums, due dates, and adjustment to the prepaid estimates.

Rule 4132-20-04 establishes requirements and timing for payroll reporting.

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

Ohio Revised Code 4131.12, 4131.13, and 4131.14

3. Does the regulation implement a federal requirement? No 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? No
If yes, please briefly explain the source and substance of the federal requirement.

The rules relate to the Federal Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, but the program places no regulatory mandate on BWC.

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 Ohio Revised Code requires that BWC adopt rules regarding subscription and participation in the Marine Industry Fund. The public purpose of the rules is to provide guidelines to employers who chose to subscribe to this fund as a cost effective option for the employer to obtain coverage for its employees' injuries under the Federal Longshoremen's and Harbor Workers' Compensation Act.

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

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These rules provide the parameters for employer participation in the Marine Industry Fund. BWC can determine the success of the rules and of the fund by the level of employer participation in the fund, the total premiums paid to the fund, the solvency of the fund, and whether employers view the fund as a cost effective option for coverage under the Federal Longshoremen's and Harbor Workers' Compensation Act. The rules will provide for greater administrative efficiencies, which should lead to lower costs.

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 stakeholders are the 120 current subscribers to the fund. The rules have been in place for years. BWC's proposed changes to the rules are based on its prior experience with the fund. BWC contacted all 120 employers by e-mail notice of the proposed changes to these rules.

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

BWC did not receive any comments from the current subscribers to the fund.

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?

These rules provide for the processes to subscribe and maintain coverage Marine Industry Fund coverage. This process is not subject to scientific data or analysis. However, the outcomes of the rule changes are measureable by the level of employer participation in the fund, the total premiums paid to the fund, the solvency of the fund, and whether employers view the fund as a cost effective option for coverage under the Federal Longshoremen's and Harbor Workers' Compensation Act.

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? These rules have been amended to place the reporting and payment of premiums on the same schedule as the State Insurance Fund. These changes also make it easier for the employer to report payroll when rates are changed effective July 1. Under the old rules and staggered renewal dates, employers would have to segregate and report payroll for the portion of the eight month period occurring prior to July 1 and for the portion of the

eight month period subsequent to July 1. **If none, why didn't the Agency consider regulatory alternatives?**

- 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.***

These rules provide for the processes to subscribe and maintain coverage Marine Industry Fund coverage. The rules are not subject to performance-based measurement.

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

These rules are specific to the BWC Marine Industry Fund, and employer coverage in that fund. Since BWC is the only state agency that administers workers' compensation in Ohio, there is no duplication between these rules and other rules in the Ohio Administrative Code.

- 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 changes to these rules have been communicated to all subscribers to the Marine Industry Fund by e-mail. BWC will also communicate the changes in upcoming payroll report forms and other communications to the employers. These changes will make it easier to ensure that all reports are filed and premiums paid since all employers will be adhering to the same schedule. This should help to ensure consistency and predictability.

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

- a. The impacted business community is the 120 current employers who subscribe to the BWC Marine Industry Fund, and any other Ohio employer who engages employees who

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work on or about navigable waters, and for whom coverage is required by the Federal Longshoremen and Harbor Workers' Act.

b. The adverse impacts include the requirement for the employer to complete and report a payroll report form to BWC to obtain the coverage under this fund, and the new rule requirement for a minimum administrative cost fund charge should the employer's premium be less than \$50.00 during a six month period.

c. The time to complete a payroll report form will vary with the size of the employer, but should be less than one hour and should involve minimal effort. After the employer determines its total payroll for the period, the key information required on the form, the rest of the form is easy to complete. For employers with zero payroll, the rules will now require a minimum administrative cost fund assessment of \$100.00 annually.

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

First, the employer's participation in the BWC Marine Industry Fund is voluntary. Second, BWC believes that it offers an effective, economical, and competitive option to employers for coverage under the Federal Longshoremen's and Harbor Workers' Compensation Act. Third, the impact of the new minimum administrative cost charge is justified by the cost to BWC of servicing the employer's Marine Industry Fund account. Finally, the minimal regulatory impact upon the employer is balanced by the benefit the employer enjoys in compliance with the Federal requirement for such coverage.

Regulatory Flexibility

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

No. These rules provide for the processes to subscribe and maintain coverage Marine Industry Fund coverage. There is no need to provide exemptions or alternative means of compliance.

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?

There are no fines or penalties for paperwork violations under these rules. If the employer does not pay its premiums, the employer does not have coverage. Since the coverage is voluntary with BWC, the employer may chose to purchase this coverage from a private insurance carrier. If the employer is late with its payment, and still desires to continue coverage with BWC, there may be a lapse in coverage. However, BWC has the authority to

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waive the lapse under existing policies and procedures that are already in place for employers to ask for retroactive coverage and forgiveness of lapses in coverage.

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

BWC posts information on the Marine Industry Fund on the BWC website at Ohiobwc.com. BWC has a Marine Industry Fund Fact Sheet for employers available on its website. Also, employers can contact BWC's Employer Management Services for assistance with obtaining coverage, reporting payroll, and paying premiums.