

# CSI - Ohio

## The Common Sense Initiative

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### MEMORANDUM

**TO:** Tom Sico, Ohio Bureau of Workers' Compensation

**FROM:** Paula Steele, Regulatory Policy Advocate

**DATE:** April 6, 2012

**RE:** CSI Review – Marine Industry Fund Rules (OAC 4123-20)

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis. This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

#### Analysis

The draft rules outline the administrative process and requirements to apply for and maintain coverage through the Bureau's Marine Industry Fund. Coverage is required by the Federal Longshore and Harbor Workers' Compensation Act for employers doing business on Ohio's navigable waterways. The draft rules have been reviewed by the Board under the five-year rule review requirement of Ohio Revised Code 119.032, and includes seven rules in total, three of which have been amended. The amendments primarily deal with reporting, premium payment, and coverage cycles and were amended so that the cycles would be consistent with those of the State Insurance Fund. In addition, an amendment authorizes the Bureau to charge a minimum administrative fee of \$100 per year under certain criteria.

These rules and the associated Business Impact Analysis (BIA) were filed with the CSI Office on February 23, 2012, and the comment period for the rule closed on March 30, 2012. No comments were received during the public comment period.

For these rules, the Bureau described a process for stakeholder outreach that involved emailing the proposed language to all employers currently enrolled for coverage through the Marine Industry Fund. Because these rules consist of relatively targeted changes to an existing rule, this

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method of stakeholder outreach seems appropriate. However, the CSI office discussed with the Bureau the critical importance of early stakeholder involvement, particularly for new rules.

The final proposed amendment authorizes the Bureau to charge a minimum administrative fee, which the BIA indicates will be \$50 per six months. While this is a new provision in the rule, the Bureau stated that the administrative fees are currently built into the premium; however, when the premium is less than the administrative costs, the amendment enables the Bureau to recoup those costs. Moreover, in similar rules, the Bureau justifies the fee with the assertion that it is appropriate for the applicant to support the administrative costs of the application, rather than Ohio employers who otherwise fund Bureau operations.

Review of the rules and the associated Business Impact Analysis (BIA) motivated additional inquiry with the Bureau and a request for a revised BIA to clarify, include additional information, and correct the statement that the rules were implementing a federal mandate. CSI also recommended a change that OAC 4123-20-03 (D) include language on how the Bureau will treat the overpayment of premiums in cases where the company is no longer in need of Marine Industry Fund coverage (i.e., crediting future premium payments is not an option).

On April 2, 2012, the BWC submitted a revised BIA and draft rules incorporating the CSI recommendations described above. After reviewing the proposed rules and the associated BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules justify the adverse impact identified in the BIA.

### **Recommendations**

As described above, the CSI Office made the following recommendations to the Bureau's Business Impact Analysis dated February 23, 2012:

1. Apply the analysis of the BIA to all rules in the package, including "no change" rules.
2. Correct the answer to question #3 to clarify that the rules are not required by the federal government.
3. Revise the BIA to better explain, with more detail and specificity, the purpose of the regulation and the adverse impact to businesses.
4. Revise draft rule 4123-20-03(D) to address refunds by the Bureau for premium overpayments when the employer is no longer making payments into the Marine Industry Fund.

**Please Note:** Recommendations 1-3 were addressed in the revised BIA submitted to the CSI Office on April 2, 2012. The Bureau agreed to include a provision that indicates in instances of overpayment of premiums, the Marine Industry Fund will either credit the renewal premium or refund the overpayment. However, that amendment has not been submitted to the CSI Office.

**Conclusion**

Based on the above comments, the CSI Office concludes that the Agency should implement recommendation #4 above, and then proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office  
Stephen Buehrer, Administrator/CEO, Ohio Bureau of Workers' Compensation