

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Coal Workers Pneumoconiosis Fund Rules

Rule Number(s): 4123-21-01(NC), 4123-21-02(A), 4123-21-03(NC), 4123-21-03.1(R),  
4123-21-04, 4123-21-05, 4123-21-06, 4123-21-07, 4123-21-08

Date: October 1, 2013

**Rule Type:**

New

5-Year Review

Amended

Rescinded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 4123-21 of the Administrative Code contains rules relating to the Coal-Workers Pneumoconiosis Fund. There are nine rules in this Chapter, rules 4123-21-01 to 4123-21-08, including a special rule adopted in 2008, rule 4123-21-03.1. BWC is proposing to keep the main

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text of seven of these rules as they current are worded. There have not been any changes in the underlying statutes upon which these rules are based. For two of the rules, however, there are changes.

**Rule 4123-21-02:** BWC is deleting the language in Paragraph (D) and modifying the language in Paragraph (E) to update the rule by removing obsolete language. The deleted text relates historically to 1973, when responsibility for black lung claims shifted from the Federal Government (SSA) to coal mine operators, who became responsible to maintain the appropriate insurance. BWC no longer has new claims from 1973 or earlier.

**Rule 4123-21-03.1:** BWC is rescinding this rule due based on recently adopted Am. Sub. H.B. 59. The Act deletes from R.C. 4131.03(B)(2) the language added a few years ago by S.B. 323 of the 127th General Assembly, which had authorized the Administrator to adopt rules to transfer a portion of the investment earnings credited to the Pneumoconiosis Fund to the Mine Safety Fund created by the Act.

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

The background law for these rules is in Ohio Revised Code Sections 4131.01 to 4131.06.

**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.*

Coal Workers Pneumoconiosis benefits are governed by Federal law, but BWC's insurance coverage of employers is not governed by Federal law. The Federal law is Title IV of the "Federal Coal Mine Health and Safety Act of 1969," 83 Stat. 742, 30 U.S.C. 801, and as amended. BWC acts as an insurer for employers who chose to obtain Coal Workers Pneumoconiosis coverage from BWC. While all coal employers must have Coal Workers Pneumoconiosis coverage, it is optional whether the employer chooses to obtain the coverage from BWC. If an injured coal employee files a claim, BWC acts as the insurer in the claim, paying benefits under the Federal law.

**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 Coal Workers Pneumoconiosis Fund is a fund created and administered pursuant to sections 4131.01 to 4131.06 of the Revised Code. The public purposes of the rules are to describe the Administrator's powers and duties regarding the Fund, the obligations of employer subscribers to

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pay premiums to the Fund, the disbursement of claim payments from the Fund, the collection of premiums, and the assignment of immunity under the Fund, as designed by the statutes.

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

Success is measured by the number of employers participating in the Coal Workers Pneumoconiosis Fund, and the satisfaction of subscribers to the Fund to remain in the Fund.

**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.*

There are approximately forty employers who are subscribers to BWC's Coal Workers Pneumoconiosis Fund. BWC shared the rules with all current employers who are subscribers to the Fund. BWC either e-mailed or mailed the proposed rules to the employers and solicited comments or input.

**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 or feedback from subscribers.

**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?**

None.

**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?**

None. The rules are based upon the statutes.

**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?**

This program and thus these rules are specific to BWC. There are no related or equivalent 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 Coal Workers Pneumoconiosis Fund community of employers is familiar with all proposed changes to the current rules, based on BWC’s individual contact with these subscribers. BWC has sought input and has communicated the impacts of the changes to the subscribers.

**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 community is the approximately forty coal mine employers who are currently subscribers to BWC’s Coal Workers Pneumoconiosis Fund, and other coal mine employers who are not current subscribers but operate in the state of Ohio.
- b. The impact of these changes should be neutral to the subscribers to the Fund.
- c. The rules continue some reporting and monitoring requirements that will require time and effort for Coal Workers Pneumoconiosis Fund subscribers. The rescission of rule 4123-21-03.1 will save the Fund approximately \$5,000,000 per year, which had been, during the brief period permitted by a now rescinded statute , transferred from the investment surplus of the Fund to the Department of Natural Resources for the Coal Mine Safety program.

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

BWC has a fiduciary responsibility to the Coal Workers Pneumoconiosis Fund on behalf of coal workers who file for benefits from the Fund and on behalf of employers who subscribe to the Fund. The impact of these minor changes should be primarily positive to these stakeholders.

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## **Regulatory Flexibility**

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

No. However, keep in mind, an employer need not obtain coverage under the Federal Act from BWC; the employer can purchase coverage on the private market.

### **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 related to these rules.

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

BWC's Legal Department administers the Fund, and is available to assist employers who are or wish to become subscribers to the Fund. The pool of current and potential subscribers to the Fund is small enough that BWC can directly contact employers on Coal Workers Pneumoconiosis Fund issues.