



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers' Compensation

Rule Contact Name and Contact Information:

Aniko Nagy (614) 466-3293

Regulation/Package Title (a general description of the rules' substantive content):

Marine Industry Fund Rules.

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

Date of Submission for CSI Review: \_\_\_\_\_

Public Comment Period End Date: \_\_\_\_\_

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/ 6 rules (FYR? \_\_\_)

Amended/ 1 rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

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

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

The rules in Chapter 4123-20 describe the process for an employer to apply for coverage from the Marine Industry Fund, to make premium payments and report payroll, to permit the Bureau to conduct audits and inspections, to provide for the Bureau to settle claims, and for other issues related to the operation of the Marine Industry Fund. Note that these rules are distinct from rule 4123-17-19, "Employer contribution to the marine industry fund," a rule that the Bureau presents annually to the Board to set the actual premium rates for employers for the Marine Industry Fund.

4123-20-01, "Application for subscription to the marine industry fund."

4123-20-02, "Subscription to the marine industry fund."

4123-20-03, "Premium payment."

4123-20-04, "Payroll reporting."

4123-20-05, "Payroll to be reported."

4123-20-06, "Audits and inspections."

4123-20-07, "Controversion of claims."

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

The Bureau reviewed these rules and recommend that six of the rules be retained with no rule changes.

The only rule with changes is rule 4123-20-05, "Payroll to be reported."

Rule 4123-20-05

In Paragraphs (A) and (F) of rule 4123-20-05, "Payroll to be reported," the Bureau is proposing amendments to clarify that an employer must only report maritime payroll related to Ohio maritime activities.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Ohio Revised Code 4131.12, 4131.13, and 4131.14

- 4. 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.**

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.

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

N/A

- 6. 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.

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

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

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

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

### **Development of the Regulation**

- 9. 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 150 current subscribers to the fund. The rules have been in place for years. BWC contacted all 150 employers by e-mail notice of the proposed changes to these rules.

- 10. 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.

- 11. 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 measurable 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.

- 12. 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?**

No regulatory alternative was considered. This rule was revised in order to clarify what is meant by "[a]ny employer doing business in the state of Ohio and having, by reason of operations within the territorial boundaries of this state" under Ohio Adm. Code 4123-17-01(A). Otherwise, the change is consistent with the BWC rules in place that are for the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

purpose of running a small program administering Federal Longshore benefits for Ohio maritime employers that complies with current federal regulations.

- 13. 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.

- 14. 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 by 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.

- 15. 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.**

BWC will communicate the results of this five year rule review in upcoming payroll report forms and other communications to the employers. This should help to ensure consistency and predictability.

### **Adverse Impact to Business**

- 16. 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; and**

The impacted business community is the 150 current employers who subscribe to the BWC Marine Industry Fund, and any other Ohio employer who engages employees who work on or about navigable waters, and for whom coverage is required by the Federal Longshoremen and Harbor Workers' Act.

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

This rule requires that employers with exposure under the Longshore Act outside of Ohio waterways obtain Longshore coverage from another source.

- 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*

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

***“representative business.” Please include the source for your information/estimated impact.***

There should be no adverse impact from this change in that it otherwise clarifies the current status of coverage by the Ohio Marine Industry Fund.

**17. 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.. 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**

**18. 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.

**19. 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 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.

**20. 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](http://Ohiobwc.com). BWC has a Marine Industry Fund Fact Sheet for employers available on its website. Also, employers can contact BWC’s Underwriting Services for assistance with obtaining coverage, reporting payroll, and paying premiums.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)