



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## Business Impact Analysis

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

Rule Contact Name and Contact Information:

Eva Dixon 614-644-8346 enotification@bwc.ohio.gov

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, 4123-20-07

Date of Submission for CSI Review: November 6, 2024

Public Comment Period End Date: November 20, 2024

Rule Type/Number of Rules:

New/ 1 rules

No Change/      rules (FYR?     )

Amended/ 6 rules (FYR?     )

Rescinded/ 1 rules (FYR?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

### **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 estimated 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, "Notice of estimated premium, payroll reporting and reconciliation of premium due."

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

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

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

The Bureau reviewed these rules and recommended that all seven rules be updated. Six of the rules include proposed changes that were the result of legislative action to remove regulatory restrictions in the rules. BWC has removed words such as “shall”, “must”, “required”, etc. to comply with this directive.

Rule 4123-20-04, “Payroll reporting.” was rescinded in entirety and the Bureau is proposing a replacement of 4123-20-04.

These changes will change the Marine Industry Fund from collecting premium retrospectively to collecting premium prospective, as was done for the other funds at BWC. With the proposed rule change, the employer will go from having to report payroll semi-annually to annually.

- 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.**

Authorize: O.R.C.4121.12, 4121.121

Amplify: O.R.C. 4131.12, 4131.13, 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 implements a federal requirement, but 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 Marine Industry Fund currently operates on a retrospective billing basis, with payroll reports due to BWC on a semi-annual basis. The public purpose of the rescension and replacement of Rule 4123-20-04 is to move the Marine Industry Fund to prospective billing, which provides for annual payroll reporting for subscribers to the fund.

**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 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 current 124 subscribers to the fund. BWC contacted all 124 subscribers by email 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 received no comments or concerns from stakeholders. As a result, no additional changes were needed to the rule as proposed.

**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?**  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

No regulatory alternative was considered. Rule 4123-20-04 was rescinded and replaced in order to update notice of estimated premium, payroll reporting and reconciliation of premium due pursuant to the change from retrospective to prospective billing.

- 13. 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.

- 14. 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 BWC will communicate the change in Rule 4123-20-04 in upcoming communications to the employers and through the BWC website. This should ensure consistency and predictability for subscribers to the Marine Industry Fund.

### **Adverse Impact to Business**

- 15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**

The impacted business community is the 124 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. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

The rules could potentially require specific expenditures, in that employers must make whatever expenditures are necessary to comply with the standards in the rules.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**  
The proposed replacement of Rule 4123-20-04 changes the requirement of payroll reporting for the Marine Industry Fund policy from semi-annual reporting to annual reporting. This reduces regulatory burden on subscribers to the 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.