

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: Wage and Hour: Prevailing Wage Regulations

Rule Number(s): 4101:9-4-01

Date: 1/10/14

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Rescinded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.

Intent:

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This rule establishes the procedure to propose, amend or rescind rules. The rule establishes the time period in which a hearing must be held before changing rules; where such notice is published; the content of such notice; and the availability of such notice.

Changes Proposed:

R.C. 119.03(A)(4) provides that a public hearing shall be held between 31 and 40 days before administrative rules are adopted, amended or rescinded. This amendment makes the rule consistent with R.C. 119.03(A)(4).

This amendment also removes an extra period in paragraph (B).

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

R.C. 4115.12.

Furthermore, when this rule was initially filed in March 2012 as part of a no-change, comprehensive prevailing wage rule package, JCARR noted an inconsistency between this rule and R.C. 119.03(A)(4) and ordered the Agency to amend and re-file this rule consistent with the requirements of R.C. 119.03(A)(4).

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?

No.

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

N/A.

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 rules, which are promulgated pursuant to the requirements of the Revised Code, must be consistent with the administrative procedures in R.C. Chapter 119. This amendment makes the rule consistent with R.C. 119.03(A)(4).

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

Success of this rule will be measured by the overall efficiency and effectiveness of the public hearing notice process for prevailing wage administrative rules, and its compliance with R.C. 119.03(A)(4)

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.

A comprehensive prevailing wage rule package was presented to stakeholders via email in the middle of October 2011, including: Mechanical Contractors Association of Ohio (MCAO); Ohio Contractor's Association; International Brotherhood of Electrical Workers (IBEW); Associated General Contractors of Ohio (AGC); and the Ohio State Building and Construction Trades Council.

In addition, this proposed rule amendment was again e-mailed to all stakeholders on December 11, 2013. The feedback was all positive and the stakeholders supported making these changes to remain consistent with R.C. 119.03(A)(4).

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

This rule was originally proposed and filed as a no-change rule with no objection from stakeholders. After JCARR noted the inconsistency between this rule and R.C. 119.03(A)(4), this rule will be re-filed as an amended rule to clarify the applicable time period in which a hearing must be held before making a rule change.

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?

N/A: The rule is being amended to correct the inconsistency between this rule and R.C. 119.03(A)(4).

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?

The rules, which are promulgated pursuant to the requirements of the Revised Code, must be consistent with the administrative procedures in R.C. Chapter 119. This amendment makes the rule consistent with R.C. 119.03(A)(4). Accordingly, no alternatives needed to be considered.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulation is not applicable here. The rules, which are promulgated pursuant to the requirements of the Revised Code, must be consistent with the administrative procedures in R.C. Chapter 119. This amendment makes the rule consistent with R.C. 119.03(A)(4) and reduces any confusion in the construction industry.

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

This amendment makes the rule consistent with R.C. 119.03(A)(4) and reduces any confusion in the construction industry.

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 amended rule will be applied consistently in accordance with the administrative procedures governed by R.C. Chapter 119.

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;

The business community affected by this rule is the construction industry and any business that performs construction for public works. This rule amendment will make the rule consistent with timeframe set forth in R.C. Chapter 119 and therefore will not have a noticeable impact on any specific sector of Ohio's business community.

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

There is no adverse impact on the regulated business community. This amendment makes the rule consistent with R.C. 119.03(A)(4) and reduces any confusion in the construction industry regarding the applicable time period in which a hearing must be held before making a rule change.

c. Quantify the expected adverse impact from the regulation.

There is no adverse impact on the regulated business community. This amendment makes the rule consistent with R.C. 119.03(A)(4) and reduces any confusion in the construction industry regarding the applicable time period in which a hearing must be held before making a rule change.

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

There is no adverse impact on the regulated business community. This amendment makes the rule consistent with R.C. 119.03(A)(4) and reduces any confusion in the construction industry regarding the applicable time period in which a hearing must be held before making a rule change.

Regulatory Flexibility

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

This amendment makes the rule consistent with R.C. 119.03(A)(4) and reduces any confusion in the construction industry regarding the applicable time period in which a hearing must be held before making a rule change.

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?

N/A.

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

This amendment makes the rule consistent with R.C. 119.03(A)(4) and reduces any confusion in the construction industry regarding the applicable time period in which a hearing must be held before making a rule change. The amended rule will be applied consistently in accordance with the administrative procedures governed by R.C. Chapter 119.