

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

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

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

Date: 4/2/2019

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Rescinded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.

Pursuant to Ohio Revised Code section 4115.03 et seq., the rules set forth in Chapter 4101:9-4 of the Ohio Administrative Code sets forth requirements and procedures needed to enforce Ohio's prevailing wage law ("the Law"). The Law requires a minimum wage to be paid to

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

CSIOhio@governor.ohio.gov

laborers, workers, or mechanics that are employed on public improvement construction projects. Prevailing wages are the sum of the employees' hourly rate of pay and other verified fringe benefits like health insurance, vacation pay, and retirement contributions. The wage rates are primarily tied to local collective bargaining agreements that are negotiated between employers and bona fide organizations of labor.

Prevailing wages only apply when there is a public interest in the construction and the project costs exceed thresholds established by law. While there are a number of exceptions to the law, like the exclusion of K-12 construction, the law generally applies to construction undertaken by or for most public entities.

The package contains 1 no-change rule which is being reviewed as part of the five-year rule review process. See "Attachment B" for a rule breakdown.

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

R.C. 4115.12

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.

No. 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)?

Pursuant to R.C. Section 4115.12, the Ohio General Assembly passed legislation permitting the Director of Commerce, to adopt rules to facilitate the administration of sections 4115.03 to 4115.16 of the Revised Code, and to achieve the purposes of those sections. The Rule specifically addresses the availability and requirements associated with public hearings on the adoption of new rules, the amendment or rescission of current rules and the requirements and methods of public notice regarding those proposed changes.

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

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

CSIOhio@governor.ohio.gov

The rule is successful when compliance with the law is high and the public is aware of proposed changes and has adequate opportunities to engage in the process.

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.

Stakeholders were contacted via e-mail on April 25, 2019.

A list of stakeholders may be found in “Attachment A” of this document.

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

The stakeholders are supportive of this entire no-change rule package and suggested no amendments, revisions, or new rules. These stakeholders consist of persons potentially affected by the proposed regulation, and include businesses, trade associations, governmental agencies, employee and employer groups, and child/minor advocates (“the Industry”).

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?

The rule, which is promulgated pursuant to the requirements of R.C. 4115.03 et seq., and R.C. Chapter 119 is created based upon the clear requirements found in the law.

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 Agency did not consider regulatory alternatives, as the rule has been in place for the prior 5 years without incident, and the Industry is supportive of this rule.

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.*

No. This rule is not appropriate for performance based regulation.

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

The prevailing wage rules are specifically authorized by R.C. 4115.12. Commerce conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure there are no other regulations in place pertaining to these specific rules.

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.

Commerce will notify the Industry about the rule package. The rule has been in place for the last 5 years and is unchanged so it will be unnecessary to create an implementation plan, where the Agency will simply maintain the status quo. Given the no-change nature of this rule, there will be little to no impact to the community served.

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;

Stakeholders have the opportunity to comment on proposed changes, or lack of changes to proposed rules involving Chapter 4109:4 of the Ohio Administrative Code.

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

None.

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.

Since these opportunities to be involved in the rule review process already exist under current regulations, no new adverse impact will result from the proposed rule package. Furthermore, the rules create no new impact on stakeholders that is not specifically set forth in the underlying Law.

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

The rule, which is promulgated pursuant to the requirements of R.C. 4115.12 and R.C Chapter 119, are intended to help clarify and elaborate upon the law. The regulation does not have an adverse impact on the business community that was not specifically intended by the underlying legislation.

Regulatory Flexibility

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

N/A.

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?

Commerce is easily accessible for information or questions via internet, phone and e-mail. Commerce strives to assist small businesses to maintain compliance with each of the requirements of R.C. Chapter 4115 and O.A.C. Chapter 4101:9-4, through Industry meetings, roundtable sessions, and other outreach events.

ATTACHMENT A

List of Stakeholders

Indiana/Kentucky/Ohio Regional Council of Carpenters
Don Crane, Director of Ohio
771 Greenwood Springs Drive
Greenwood, IN 46143
website@ikorcc.com

Operating Engineers
Mark Totman
Legislative Rep
1188 Dublin Road
Columbus, OH 43215-7005
614-486-5281
fax: 614-486-7258
www.iuoelocal18.org

Laborers District Council
Ralph Cole
Secretary-Treasurer
102 Dorchester Square
Westerville, OH 43081
614-895-9002
oldckh@hotmail.com
www.ohlhc.com

Ohio State Association of Journeyman Plumbers & Pipefitters
William Koester
Lobbyist
5651 Breezewood Dr.
Cincinnati, OH 45248
513-262-1976
wilko392@yahoo.com

Ohio State Building and Construction Trades Council
Dennis Duffey
Secretary-Treasurer

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

CSIOhio@governor.ohio.gov

222 E. Town Street
Columbus, OH 43215
614-221-3682
osbctc@ohiostatebtc.org

Ohio AFL-CIO
Matt Smith
Legislative Director
395 E. Broad Street, Suite 210,
Columbus, OH 43215
614-224-8271
msmith@ohaflcio.org
www.ohaflcio.org

Graff & McGovern
Luther Liggett
Lobbyist
604 East Rich Street
Columbus, Ohio 43215
(614) 228-5800
luther@grafflaw.com

NECA Chapter
Brian Damant
Manager
947 Goodale Blvd.
Columbus, OH 43212
614-224-4408
b.damant@electricaltrades.org
www.cohneca.org

Valerie Dahlberg
MCAO Executive Director
2077 Embury Park Road
Dayton, Ohio 45414
888.294.0084
Info@MCAOhio.com
www.mcaco.org

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Associated General Contractors of Ohio (AGC)

Andrea Ashley or Rich Hobbs

Vice President of Governmental Affairs

1755 Northwest Boulevard

Columbus, OH 43212

614-486-6446

rjh@agcoho.com

www.agcoho.com

OCA

Mark Potnick or Rich Hobbs

Director Labor Relations & Safety Affairs

313 Dublin Road

Columbus, OH 43215

614-488-0724

mpotnick@ohiocontractors.org

www.ohiocontractors.org

OADC

Ken Kudela

Director

5171 Hudson Dr.

Hudson, OH 44236

330-463-5419

oadc@oadc.net

<http://oh-kyadc.com>

ABC Central Ohio

Bryan Williams

Director of Government Affairs

1722 Jetway Blvd., Suite B

Columbus, OH 43219

614-529-4300

www.centralohioabc.org

bwilliams@abcofohio.org

Ohio Valley ABC

John Morris

President

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

CSIOhio@governor.ohio.gov

33 Greenwood Lane
Springboro, OH 45066
937-704-0111
john@ovabc.org
www.ovabc.org

Northern Ohio Chapter ABC
Nick Nykulak (Legal Counsel)
Ross, Brittain & Schonberg
6480 Rockside Woods Blvd. S., #350
Independence, OH 44131
216.447.1551
nickn@rbslaw.com

ABC of Ohio
Bryan Williams
Director of Government Affairs
1722 Jetway Blvd., Suite B
Columbus, OH 43219
614-529-4321
bwilliams@abcofohio.org

Ohio Chamber of Commerce
Keith Lake
Vice President Governmental Affairs
230 East Town St. P.O. Box 15159
Columbus, OH 43215
614-228-4201
klake@ohiochamber.com
www.ohiochamber.com

Ohio State Building & Construction Trades Council
Dennis Duffey
222 E. Town Street
Columbus, OH 43215
614-221-3682
osbctc@ohiostatebtc.org

ACT Ohio

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

CSIOhio@governor.ohio.gov

Matthew Szollosi - Executive Director
222 E. Town St.
Columbus, OH 43215
614-228-5446
mszollosi@actohio.org

Ohio County Commissioners Association
Suzanne Dulaney, Esq.
Executive Director
209 E. State Street
Columbus, OH 43215
614/220-7977
sdulaney@ccao.org
www.ccao.org

Ohio Township Association
Matt DeTemple
Executive Director
6500 Taylor Road, Suite A
Blacklick, OH 43004
detemple@ohiotownships.org
614-863-0045

Ohio Municipal League
Kent Scarrett
Executive Director
175 South Third Street, Suite 510
Columbus, OH 43215
614-221-4349
kscarrett@omloho.org
www.omloho.org

IBEW District 4
Dave Moran
International Representative
Corporate Plaza 1, 6450 Rockside Woods Blvd., Suite 150
Independence, OH 44131
216-328-0004
ivpd_04@ibew.org

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov



Department of Commerce

Mike DeWine, Governor
Jon Husted, Lt. Governor

Division of Industrial Compliance
Sheryl Maxfield, Director

ATTACHMENT B Prevailing Wage Regulations Overview

Memorandum

Prevailing Wage Rules Review	Overview of Changes
4101:9-4-01	Public hearings on adoption, amendment, or rescission of rules; methods of public notice. No change.

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

CSIOhio@governor.ohio.gov