

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): 4101:9-4-02

Date: 7/25/2017

Rule Type:

☐ New

XX 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☐ Rescinded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

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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 Rules mirror the statutory framework set forth by the legislature and attempt to facilitate a better understanding of the requirements embodied in the law in efforts to promote compliance with the law by contractors, subcontractors, and public authorities. The specific rule is merely a definitions section of the Code designed to give regulated parties guidance for easier compliance with the law.

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

The rule is successful when compliance with the law is high and non-compliance with the law is not the result of vague or ambiguous requirements. The agency charged with enforcing the Law is the Bureau of Wage and Hour, housed within the Division of Industrial Compliance. Wage and Hour is a complaint driven Bureau so we also measure success by lowering the number of complaints received by the Bureau.

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 May 30, 2017.

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 no-change rule and offered no suggestions.

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., was 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 and suggested no amendments, rescissions, or additions.

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 regulations.

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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 this specific rule.

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. The rule has been in place for the last 5 years and remains unchanged so it will be unnecessary to create an implementation plan. The Agency will simply maintain the status quo. Given the no-change nature of this rule, there will be little to no impact to 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;

Employers who bid and work on public improvements, as defined within the Law, which are not exempt from the requirements of the law.

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

This rule is merely definitional in nature and should have no adverse impacts on the business community.

The regulatory scheme of which this rule is a part impacts employers who wish to bid and work on public improvements as defined within the law, which are not exempt from the requirements of the law.

These employers must pay a minimum wage to skilled tradesmen on the jobsite that is equivalent to union scale wages. Employers must also keep and file certified pay roll reports which verify the hours that each employee works, the wages and fringe benefits paid by the employer for each employee, the name of the project, the public authority and any general/prime contractor on the project by whom the employer was hired. The certified payroll reports must be kept by the employer and submitted to a

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prevailing wage coordinator on each public improvement. The employer must swear to the veracity of each of the reports filed. In most respects the information that the law requires that employers keep is similar to the information already required by Ohio's Minimum Wage statute. The time investment for employers to create certified payroll reports, instead of merely maintaining employment records as required by Ohio Minimum Wage law, is minimal and difficult to quantify.

Noncompliance with the law could result in employers being held liable for all back wages not paid to their respective employees. Additionally, employers may be subject to penalties amounting to the amount of back wages not paid by the employer. Should the issue of nonpayment become the subject of a legal action in a court with jurisdiction, the employer could also be responsible for the legal costs of the action and for the payment of attorney fees incurred by the prevailing party.

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 requirements already exist under current regulations no new adverse impact will result from the proposed rule. Furthermore, this rule is definitional in nature and provides guidance to affected parties and does not impose burdens.

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

This rule, which is promulgated pursuant to the requirements of R.C. 4115.12, is intended to help clarify and elaborate upon the law.

Section 4115.12 of the Revised Code requires the Agency to develop rules to facilitate the administration of sections 4115.03 to 4115.16 of the Revised Code. The Agency developed this rule to facilitate an understanding of the requirements imposed by the Revised Code and encourage compliance and limit possible adverse impact on businesses.

Regulatory Flexibility

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

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While the rules that govern this area of law do provide exemptions, this rule is merely definitional in nature and thus not appropriate for this analysis.

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?

The compliance and enforcement actions established by these rules do not result in fines or penalties for paperwork violations. A simple and informal notice to correct a paperwork violation has been the only action taken by the bureau in the last 10 years.

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

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**Department
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**ATTACHMENT B –
Prevailing Wage Regulations Overview**

Memorandum

Prevailing Wage Rules Review	Overview of Changes
4101:9-4-02	Definitions– no changes to this rule