CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Specific Safety Requirements of the Ohio Bureau of Workers' Compensation relating to Construction.

Rule Number(s): Chapter 4123:1-3

Date: 4/15/2014

Rule Type:

- ☐ New
- ☐ Amended
- X 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- ☐ Rescinded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.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   The purpose of Chapter 4123:1-3 of the Administrative Code is to provide specific safety requirements to protect life, limb and health of employees engaged in construction activity.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Article II, Section 35, Ohio Constitution and Ohio Revised Code §4121.13.

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.
   If yes, please briefly explain the source and substance of the federal requirement.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** These Specific Safety Requirements (SSR) are particular to the State of Ohio and governed solely by state law.

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)?** 4123-3-20 Additional awards by reason of violations of specific safety requirements, as mandated by the Ohio Constitution and Ohio Revised Code.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** Reduction in construction industry injuries and applications for additional awards due to violations of these rules.

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. The Construction Employers Association of Cleveland (CEA), The Ohio State Building and Construction Trades Council (the Ohio State BCT), the Builders Exchange of Central Ohio (BX), Ohio Laborers' Training & Apprenticeship Trust Fund, Allied Construction Industries (ACI).

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** They provided the specific language to be compatible with nationally recognized standards. (OSHA)

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?** Side by side cross reference of the Ohio Administrative Code (OAC) 4123:1-3 Specific Safety Requirements and the Occupational Safety and Health Administration (OSHA) 29 CRF 1926 Construction Regulations.

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 stakeholders consider both the Ohio Administrative Code (OAC) and the Occupational Safety and Health Act (OSHA) to be comparable in providing safety for life, limb and health of employees engaged in construction activity.

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, because the process for compliance is mandated

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** OAC 4123:1-3 Construction Specific Safety Requirements are the only applicable rules used in Ohio for adjudication of VSSR applications for Additional Awards with respect to 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 rules will be implemented through the JCARR review process. Enforcement of the rules is through the Ohio Industrial Commission, as assisted by reports from the BWC Safety Violation Investigation Unit.

<u>Adverse Impact to Business</u>

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 performing construction activity in the state of Ohio.
    b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);** There is no adverse impact. These rule changes will allow employers to simultaneously comply with OSHA regulations and Construction Specific Safety Requirements without additional expense, so there will be no adverse impact for compliant employers.
    c. **Quantify the expected adverse impact from the regulation.** Not applicable **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.**

15. **Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community**? Not applicable.

Regulatory Flexibility

16. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** There are no exemptions or alternative means of compliance, because these rules govern specific safety requirements. Specific compliance is mandated by statute and rule.

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?** Not applicable under OAC 4123-3-20 Additional Awards by reason of violations of specific safety requirements. There are no waiver provisions because these rules protect the safety of employees.

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

BWC's Division of Safety & Hygiene (DSH) provides the following resources to obtain compliance, at no direct cost to the employer.

- DSH provides a broad spectrum of services including technical support, library services, educational services and publications.
- Additional resources include our Ohio Safety Congress & Expo, the largest regional safety and health exhibition in the United States and the Ohio safety councils, which provide a forum for occupational safety and health information in local communities.
- Financial resources are available through the SafetyGRANT$ program, which provides matching safety intervention grants to eligible employers for the purchase of equipment that may substantially reduce or eliminate workplace injuries and illnesses.
- The OSHA On-Site Consultation Program provides consultation services to small employers in high-hazard industries.
- Employer management services blend traditional risk and safety management approaches to controlling workers' compensation costs. Employer management services is dedicated to working with employers to prevent workplace injury and illness claims and to control claims costs if they do occur.
- The employers' workers' compensation premium includes the cost of these services. As a result, employers invest their safety dollars in prevention.
- The Ohio legislature established DSH as a consultative service to inform, educate and assist employers in loss-prevention activities.
- The Public Employment Risk Reduction Program (PERRP) offers safety and health consultation services to public employers.

  In relation to the above activities, DSH does not engage in enforcement of local or federal safety requirements.