

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: BWC Construction Safety Rules

Rule Number(s): 4123:1-3-17, 4123:1-3-19

Date: August 9, 2012

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Rescinded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.

Please include the key provisions of the regulation as well as any proposed amendments.

The rules are part of the BWC safety rules for the construction industry. Rule 4123:1-3-17 describes safety standards for “cutting and welding,” and rule 4123:1-3-19 describes safety standards for “demolition.” BWC is not proposing any substantive changes to the existing

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rules. During a five year rule review in 2010, BWC identified rules 4123:1-3-17 and 4123:1-3-19 as no change rules. However, BWC withdrew the rules when BWC discovered obsolete rule cross references in the rules. In 1989, the legislature transferred jurisdiction over the safety rules from the Industrial Commission to BWC, and BWC proposes to amend rules 4123:1-3-17 and 4123:1-3-19 to update cross references from the prior Industrial Commission safety rule numbers to the BWC safety rule numbers.

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

The rules are authorized by the Ohio Constitution, Article II, Section 35, and by R.C. 4121.12, 4121.121, 4121.13, and 4121.47.

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. However, the rules are based in part on OSHA regulations and standards.

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

The rules do not exceed federal OSHA regulations and standards.

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 public purpose for these rules is workplace safety. Chapter 4123:1-3 of the Administrative Code contain the construction safety rules. An employer's violation of a specific safety rule can lead to an additional award for the injured worker (VSSR award). BWC bills the VSSR award to the employer as a penalty. The Ohio Constitution, Article II, Section 35, emphasizes safety, stating that the workers' compensation board "shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, ... to be expended by such board ... for the investigation and prevention of industrial accidents and diseases." The board also shall "determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes [sic], enacted by the General Assembly or in the form of an order adopted by such board," A finding of such violation permits BWC to increase the injured worker's compensation by "such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law," and "the premium of such employer shall be increased in such amount, covering such period of

time as may be fixed, as will recoup the state fund in the amount of such additional award”

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

BWC can measure the number of safety violations that arise related to 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.

In 2009 and 2010, personnel from the BWC Division of Safety and Hygiene met with professionals from labor and management in the construction industry to review the rules of Chapter 4123:1-3. The stakeholders included representatives from the Ohio State Building and Construction Trade Council, South Central Ohio District Council of Carpenters JATC, Norris Brothers Co., Allied Construction Industries (Cincinnati), the Builders Exchange of Central Ohio, and the Construction Employers Association of Cleveland.

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

The stakeholder group provided substantial input. The stakeholder group drafted all rule revisions to the rules during the original five year rule review. For rules 4123:1-3-17 and 4123:1-3-19, the stakeholder group recommended no changes in the rules (except that BWC subsequently discovered the obsolete rule references).

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?

During the original five year rule review of the construction safety rules, the committee met and reviewed the rules based on the following major principles:

If the standard complied with the BWC safety rule and complied with OSHA, BWC kept the BWC safety rule as it was (no change).

If the standard complied with the BWC safety rule but violated OSHA, or if the standard violated the BWC safety rule but complied with OSHA, BWC changed the BWC safety rule.

If the standard did not exist in BWC safety rules but is in OSHA, BWC kept the BWC safety rule as it was (no change).

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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?

BWC compared the BWC safety rules to OSHA regulations and standards, and kept the Ohio regulations at a minimum but in harmony with OSHA regulations and standards.

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.

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

The BWC Division of Safety and Hygiene has exclusive jurisdiction over employer safety rules, so there are no other Ohio agency rules on this subject.

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.

BWC publicizes all safety standards to the impacted employer community (the construction community) and to the Industrial Commission. The Industrial Commission enforces violations of these rules.

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

- a. The rules impact all Ohio construction industry employers.

b. If an injured worker suffers an injury as a result of an employer's violation of a VSSR rule, the Industrial Commission can add from 15% to 50% to the injured worker's compensation, which is billed to the employer as a penalty or fine.

c. The amount of the financial impact to an employer, should there be an injury due to a violation of a rule, is difficult to determine. The financial impact varies based upon the amount of the percentage awarded by the Industrial Commission (15% to 50%) and the total compensation being paid to the injured worker in the claim.

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

Based on the mandate from the Ohio Constitution, Article II, Section 35, the regulations encourage safety practices by employers, protecting workers.

Regulatory Flexibility

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

No.

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?

No.

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

The BWC Division of Safety and Hygiene works with employers in education and on-site training on safety standards. Upon working with an employer and finding a violation of a safety standard, the BWC Division of Safety and Hygiene does not fine the employer like OSHA does, but rather works with the employer to improve and remedy the safety condition.