

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 - REVISED

Rule Number(s): Chapters 4123:1-1, 4123:1-7, 4123:1-9, 4123:1-11, 4123:1-13, 4123:1-17

Date: 6/12/2014

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☐ Rescinded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.

The purposes of these rules are to provide for the health and safety of employees and to ensure that employers are following specific safety requirements as defined in Chapters 4123:1-1 (Operation of elevators), 4123:1-7 (Metal casting), 4123:1-9 (Steel mills), 4123:1-11 (Laundering & dry cleaning), 4123:1-13 (Rubber & plastic), and 4123:1-17 (Window cleaning) of the Ohio Administrative Code.

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Most of these rules are unchanged because the laws and regulations governing safety regulations have not changed. The Bureau compared its rules to current OSHA regulations. The rules with proposed changes mainly relate to “cleaning up” typos, deleting/replacing unnecessary and unclear language, and complying with LSC editing requirements of rules text. However, some proposed changes are to update and comply with industrial standards and requirements for employee safety.

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

Article II, Section 35, Ohio Constitution and Sections 4121.12, 4121.121, 4121.13, and 4121.47 of the Ohio Revised Code.

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. However, the Bureau safety rules are consistent with Federal OSHA regulations. 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.

The Specific Safety Requirements (SSR) are particular to the State of Ohio, and are 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)?

The public purpose for these rules is workplace safety. 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 employees [sic], enacted by the General Assembly or in the form of an order adopted by such board,” A finding of such violation permits the Industrial Commission 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?

These rules continue to enforce safety for employees and employer compliance. As such, these rules encourage workplace safety. The Bureau is measuring such success by the amount of applications submitted 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.

Ohio Department of Commerce, Division of Industrial Compliance
International Association of Elevator Consultants
National Elevator Industry Inc. (NEII)
Fujitec America
International Union of Elevator Constructors
IUEC Local 17, Cleveland (AFL/CIO)
United Steel Workers Union Ohio District 1
Timken Company
United States Steel Corporation
Serverstal North America Inc.
McDonald Steel Corporation
Association of Iron and Steel Technology (AIST) Northeastern Ohio Chapter
Ohio Cleaners Association
Service Employees International Union (SEIU) 1199
Polymer Ohio, United Steelworkers
Ohio Safety Congress Polymer Group
window cleaning trade associations

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

The stakeholder groups provided substantial input in the development of these rules. Specifically, in regards to Chapter 4123:1-1 (Operation of elevator); a stakeholder asked to add text to rule 4123:1-1-02 (C)(3) to clarify the extend of “contribution” to a worker’s death. The stakeholder suggested that an inspection report includes “directly and materially” as a contributing factor to injury and/or death of an employee. The Bureau’s analysis in response to the suggested change concluded that if the additional language were accepted, then the rule would create a presumption that if an employer operates an elevator without a

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currently valid certificate of operation, an injury or death caused by the operation of the elevator shall be presumed to be a VSSR. The rule provides a few ways this presumption can be rebutted. The ability to rebut a presumption shifts the burden of proof to the employer to try to rebut the presumption that the elevator caused the injury. One way to rebut the presumption is in (C)(3), related to whether the inspecting authority inspected the elevator and no deficiency noted in the inspection report contributed to the injury. Adding “directly and materially” as qualifiers were change the burden of proof for the employer. After discussions with the stakeholders, all parties agreed that this language was unnecessary.

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 Bureau did a side-by-side cross reference of the Ohio Administrative Code Specific Safety Requirements and the Occupational Safety and Health Administration (OSHA) Industry Standards:

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 for the safety of life, limb and health of employees engaged in these industries.

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.*

Because of the technical nature of these rules, this process is not applicable to these rules.

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.

The amended rules will be implemented through the JCARR process and enforce through the Ohio Industrial Commission, as assisted by reports from the BWC Safety Violation Investigation Unit. The no change rules will be continued implemented and enforced by training of employers and employees. One of the largest event where both employers and

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employees receive continuing education and training is the, Safety Congress, organized by the Bureau Division of Safety & Hygiene annually.

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;

These rules impact all Ohio employers covered by the rules in the industries.

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

If an injured worker suffers an injury as a result of an employer's violation of a safety 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. 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.

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.

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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 source of occupational safety and health information for employers in local communities.
- Financial resources are available through the Safety Grant 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 are 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 our 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.