



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Department of Commerce, Division of Industrial Compliance

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Boiler Inspection Rules

Rule Number(s): 1301:3-5-01 (Amend); 1301:3-5-02 (Amend); 1301:3-5-03 (Amend);
1301:3-5-04 (Amend); 1301:3-5-05 (Amend); 1301:3-5-06 (Amend); 1301:3-5-07
(Amend); 1301:3-5-09 (Amend); 1301:3-5-10 (Amend)

Date of Submission for CSI Review: 8/19/19

Public Comment Period End Date: 9/3/19

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 9 rules (FYR? Yes)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **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 section 4104.06 of the Revised Code, the rules set forth in Chapter 1301:3-5 of the Administrative Code establish the requirements for the issuance, renewal, suspension, and revocation of certificates of competency and certificates of operation and for the inspection of boilers, pressure vessels, and their appurtenances. The rule package contains nine rules that are being reviewed as part of the 5-year rule review process.

A list with a description of the individual rules and the proposed changes is attached as “BIA Attachment A.”

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 4104.06.

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- 4. 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.

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

Not applicable.

- 6. 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 rules set forth in Chapter 1301:3-5 of the Administrative Code provide for the protection of public health and safety around boilers and pressure vessels within the state of Ohio. Improperly installed, maintained, or operated boilers and pressure vessels have the potential to explode and cause catastrophic damages and injuries. The rules aim to prevent boilers and pressure vessels from being operated under unsafe conditions or by operators who are not qualified to ensure the equipment is being maintained and run in a safe manner.

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

The rules are successful when boilers and pressure vessels in this state are being operated and maintained in a safe manner and when the impacted parties are given clear guidelines that allow them to comply in an efficient and effective manner. The success of the rules will be measured by eliciting feedback from the public, stakeholders, and any interested parties regarding the clarity and impact of the rules, as well as by investigating and reviewing any reports of accidents involving a boiler or pressure vessel.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No. No.

Development of the Regulation

9. 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 July 23, 2019.

Please see the “BIA Attachment C.”

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

Stakeholders were notified of the proposed rules and provided with an opportunity to give input on the proposed changes. The Ohio Department of Commerce did not receive any stakeholder comments or input requesting changes to the proposed rule package.

11. 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?

Both Chapter 4104 of the Revised Code and these rules use the nationally-recognized standards established by the American Society of Mechanical Engineers (“ASME”). ASME standards are written and developed by industry experts who utilize the latest scientific processes to establish their standards, and those processes include the analysis of scientific data.

12. 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?

Section 4104.02(B) of the Revised Code requires the rules relating to the construction, installation, repair, conservation of energy, and operation of boilers and pressure vessels to be based upon “generally accepted engineering standards, formulae, and practices.” Chapter 4104 of the Revised Code uses and incorporates the nationally-recognized standards established by the American Society of Mechanical Engineers (“ASME”). Consistent with those statutes, the rules adopted in Chapter 1301:3-5 of the Administrative Code also were based upon and follow the standards established by ASME, which is the industry leader on such standards. Additionally, the Ohio Department of Commerce did not receive any stakeholder or industry input requesting rule changes or alternatives, and the record of accidents relating to boilers is evidence that the current rules are effective as intended.

13. 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.*

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No. Section 4104.02(B) of the Revised Code requires the rules relating to the construction, installation, repair, conservation of energy, and operation of boilers and pressure vessels to be based upon “generally accepted engineering standards, formulae, and practices,” and Chapter 4104 of the Revised Code uses and incorporates the nationally-recognized standards established by the American Society of Mechanical Engineers (“ASME”). Consistent with those statutes, the rules adopted in Chapter 1301:3-5 of the Administrative Code were based upon and follow the standards established by ASME, which is the industry leader on such standards. Additionally, performance-based regulations are not appropriate for rules that are intended to protect the public’s health and safety.

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

Section 4104.06 of the Revised Code authorizes and requires the Superintendent of the Division of Industrial Compliance to promulgate the rules in Chapter 1301:3-5 of the Administrative Code, and no other entity is required or permitted to adopt rules regarding the issuance, renewal, suspension, and revocation of certificates of competency and certificates of operation; hearings related to those actions; and the inspection of boilers, pressure vessels, and their appurtenances. Additionally, whenever new requirements or substantive changes are made to the regulations, the Boiler section of the Division of Industrial Compliance consults with the Board of Building Standards (who adopts other rules relating to boilers and pressure vessels pursuant to section 4104.02 of the Revised Code) to ensure there was no duplication of regulations.

15. 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.

As there are little to no substantive changes proposed for the rules, the Ohio Department of Commerce does not anticipate any issues regarding implementation. Despite the likely lack of need for outreach efforts, the Ohio Department of Commerce and the Boiler section in the Division of Industrial Compliance will be available by telephone, mail, and e-mail to answer any questions from the industry and the public.

Adverse Impact to Business

16. 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; and**
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
- c. Quantify the expected adverse impact from the regulation.**

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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.

Please see the BIA Attachment B.

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

All potential adverse impacts to the regulated business community are mandated under Chapter 4104 of the Revised Code, which requires an operator license, a certificate of competency, a certificate of operation, and boilers and pressure vessels to be inspected at set intervals. Chapter 4104 of the Revised Code also sets penalties for noncompliance and requires certain information to be reported to the Division of Industrial Compliance. The referenced statutes and rules promulgated thereunder reflect a determination by the Ohio General Assembly, as well as the Division of Industrial Compliance, that the need to protect public safety around boilers and pressure vessels justifies the resulting adverse impact to the regulated business community.

Regulatory Flexibility

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

No, the regulations do not provide any exemptions or alternative means of compliance for small businesses for a couple reasons. First, the primary purpose of the regulations and authorizing statutes is to protect public safety, so, the standards are the same, regardless of the size of a business. Second, section 4104.02(B) of the Revised Code requires the rules relating to the construction, installation, repair, conservation of energy, and operation of boilers and pressure vessels to be based upon “generally accepted engineering standards, formulae, and practices.” Both Chapter 4104 of the Revised Code and the rules use the nationally-recognized standards established by the American Society of Mechanical Engineers, and those standards do not provide an exemption or alternative means of compliance for small businesses.

19. 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?

Penalties for non-compliance are set by the statutes in Chapter 4104 of the Revised Code, not the rules or the Superintendent of the Division of Industrial Compliance. The Ohio Department of Commerce and the Boilers section of the Ohio Division of Industrial Compliance have been and remain committed to working with all impacted parties to ensure that any potential first-time paperwork offenses are resolved without a negative consequence. Typically, the Ohio Department of Commerce notifies a regulated party of any paperwork mistakes or violations (regardless of whether it is the first paperwork error) and assists in making any necessary corrections. All reasonable efforts are made to provide a non-complying party with the opportunity to remedy a paperwork offense before fines or penalties are considered.

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

The Ohio Department of Commerce and the Boilers section of the Division of Industrial Compliance prioritize customer service, and both are easily accessible by e-mail, mail, and telephone to answer questions or to assist impacted parties in achieving compliance.



BOILER INSPECTION RULES

BIA ATTACHMENT A

1301:3-5-01, Definitions (Amend) – This rule sets forth the definitions of terms used in Chapter 1301:3-5 of the Administrative Code. The amendment proposes to replace the reference to the American Society of Mechanical Engineers to the National Board of Boiler and Pressure Vessel Inspectors because the form referenced in proposed rule 1301:3-5-03 of the Administrative Code is a National Board form, not an ASME form. The reasons for the correction of the forms are discussed below for that rule. The proposed amendment also makes two non-substantive corrections: a punctuation correction and the addition of “and pressure vessels” to the definition of “Inspector” to more accurately describe what an “Inspector” is in the rules.

1301:3-5-02, Inspection of boilers; preparation for inspection; hydrostatic tests (Amend)

– This rule establishes the requirement of an inspection of a boiler after installation, the preparation requirements for a boiler inspection, and the requirement of a hydrostatic test if deemed advisable by the inspector. The proposed amendment to this rule contains only non-substantive changes: removal of redundant language, a grammatical correction, and a wording change to make the terms used in the rule consistent with the other rules and statutes for boiler inspections.

1301:3-5-03, Inspection reports (Amend) – This rule sets forth the deadline for when boiler inspection reports must be submitted and the inspection report forms that must be used. An amendment is being proposed to more accurately describe the report forms that must be used for a boiler or pressure vessel inspection. The existing rule referred to the forms as the “ASME long form, boiler data report – first internal inspection” and the “ASME short form, boiler internal reinspection report,” but the actual forms used and intended by those descriptions are National Board of Boiler and Pressure Vessel Inspectors forms that are based off of the ASME standards. So, the proposed amendment corrects the name of the forms, but the forms themselves are the same forms used and intended under the current version of the rule.

1301:3-5-04, Notification of unsafe working condition; requirements for cover removal; notification of accident (Amend) – This rule sets forth the processes and requirements for when there is an unsafe working condition for a boiler or pressure vessel, a leak or a crack with a boiler or pressure vessel, or an accident involving or affecting a boiler or pressure vessel. The proposed amendment to this rule includes only non-substantive changes: removal of redundant language, addition of language for clarification, grammatical corrections, and wording changes to make the terms used in the rule consistent with the other rules and statutes for boiler and pressure vessel inspections.

1301:3-5-05, Certificate of operation (Amend) – This rule sets forth the requirements for the issuance and renewal of certificates of operation, the inspection intervals for boilers or pressure vessels, and lost or destroyed certificates of operation. The proposed amendment to this rule adds language to clarify the inspection intervals for boilers or pressure vessels, corrects references to sections of the Revised Code, and corrects an omission to make the rule consistent with the language of the statutes being amplified.

1301:3-5-06, Suspension, revocation, or denial of certificate of operation; reduction of safe working pressure, determination of necessary repairs, or declaration of unsafe boiler; lap seam crack (Amend)

– This rule sets forth when a certification of operation may be suspended, revoked, or denied; the process and requirements for when an inspector reduces the safe working pressure, determines necessary repairs, or declares a boiler to be unsafe; and the process and requirements for when a lap seam crack is found in a boiler. The proposed amendment to this rule changes the title so that there was consistency in the usage of nouns vs. verbs in the rule description and makes additions, substitutions, or modifications that increase clarity or consistency in the language of the rules and statutes amplifying the rules.

1301:3-5-07, Inspection of power boilers and process boilers (Amend) – This rule sets forth the intervals at which power boilers and process boilers must be inspected and the process by which a boiler owner or user may request an extended inspection interval. The proposed amendment to this rule adds a reference to a section of the Revised Code and modifies existing language for increased clarity. The proposed amendment also makes grammatical and punctuation corrections.

1301:3-5-09, Conduct of hearings (Amend) – This rule sets forth the requirements for hearings held under Chapter 4104 of the Revised Code. The proposed amendment to the rule removes redundant language and makes non-substantive changes to certain language to be clearer and more specific.

1301:3-5-10, Boiler operator and steam engineer experience requirements (Amend) – This rule sets forth experience requirements for low-pressure boiler operators, high-pressure boiler operators, and stationary steam engineers. The proposed amendment to this rule makes only non-substantive changes: adding an omitted article for clearer reading, grammatical and punctuation corrections; and modifying language relating to courses to make the usage consistent within the rule.

Ohio Dept. of Commerce, Boiler Inspection Rules BIA Attachment B

<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
1301:3-5-01 Definitions.	Boiler and pressure vessel owners and operators	No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule or the proposed changes.	
1301:3-5-02 Inspection of boilers; preparation for inspection; hydrostatic tests.	Boiler and pressure vessel owners and operators	<p>The existing rule requires the inspection of a boiler to be reported to the Superintendent of the Division of Industrial Compliance and states that the failure to comply with the requirements of the rule regarding preparation for an inspection or doing a hydrostatic test can result in the inspector declining to make the inspection and no certificate of operation being issued or renewed until an inspection is passed. These requirements are unchanged in the proposed amendment to this rule, and the proposed amendment does not add a new or increased adverse impact on the affected parties.</p> <p>Any criminal or civil penalty, sanction, or other cause of action created due to the failure to comply with the terms of this rule is established and set forth in Chapter 4104 of the Revised Code.</p> <p>The fee for complete inspection during construction by a general inspector on boilers and pressure vessels manufactured within the state shall be \$46.00/hour. The fee for an inspection during construction by a general inspector on a boiler or pressure vessel manufactured out of the state is \$35.00/hour plus necessary traveling and hotel expenses incurred by the inspector.</p> <p>The Board of Building Standards also assesses each owner or user a fee of \$3.25 for each inspection during construction.</p> <p>Any party who fails to pay an invoiced renewal fee within 45 days of the invoice date is charged a late payment fee equal to 25% of the invoiced fee.</p>	

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1301:3-5-03 Inspection reports.	Boiler and pressure vessel owners and operators	<p>The existing rule requires inspection reports to be submitted to the Superintendent of the Division of Industrial Compliance within thirty days of the inspection and requires inspections to be reported on certain forms. These requirements are unchanged in the proposed amendment to this rule, and the proposed amendment does not add a new or increased adverse impact on the affected parties.</p> <p>The proposed amendment does correct the names of the forms required to be used, but the forms themselves are the same and are available to the public on the National Board's website at no charge.</p> <p>Any criminal or civil penalty, sanction, or other cause of action created due to the failure to comply with the terms of this rule is established and set forth in Chapter 4104 of the Revised Code.</p>
1301:3-5-04 Notification of unsafe working condition; requirements for cover removal; notification of accident.	Boiler and pressure vessel owners and operators	<p>The existing rule requires the owner or operator of a boiler or pressure vessel that has been affected or involved in an accident to notify the Superintendent of the Division of Industrial Compliance of the accident and submit a detailed report. This requirement is unchanged in the proposed amendment to this rule, and the proposed amendment does not add a new or increased adverse impact on the affected parties.</p> <p>Any criminal or civil penalty, sanction, or other cause of action created due to the failure to comply with the terms of this rule is established and set forth in Chapter 4104 of the Revised Code.</p>
1301:3-5-05 Certificate of operation.	Boiler and pressure vessel owners and operators	<p>The existing rule requires the owner or operator of a boiler or pressure vessel to file a timely report of inspection with the Division of Industrial Compliance. This requirement is unchanged in the proposed amendment to this rule, and the proposed amendment does not add a new or increased adverse impact on the affected parties.</p> <p>Any criminal or civil penalty, sanction, or other cause of action created due to the failure to comply with the terms of this rule is established</p>

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		<p>and set forth in Chapter 4104 of the Revised Code.</p> <p>The initial/renewal certificate of operation fee is:</p> <ul style="list-style-type: none"> • \$65.00 for boilers subject to annual inspection • \$130.00 for boilers subject to biennial inspection • \$195.00 for boilers subject to triennial inspection • \$325.00 for boilers subject to quinquennial inspection <p>The Board of Building Standards also assesses each owner or user a fee of \$3.25 for each certificate of operation or renewal issued.</p> <p>Any party who fails to pay an invoiced renewal fee within 45 days of the invoice date is charged a late payment fee equal to 25% of the invoiced fee.</p>
1301:3-5-06 Suspension, revocation, or denial of certificate of operation; reduction of safe working pressure, determination of necessary repairs, or declaration of unsafe boiler; lap seam crack.	Boiler and pressure vessel owners and operators	<p>No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule or the proposed changes.</p> <p>Any criminal or civil penalty, sanction, or other cause of action created due to the failure to comply with the terms of this rule is established and set forth in Chapter 4104 of the Revised Code.</p>
1301:3-5-07 Inspection of power boilers and process boilers.	Boiler and pressure vessel owners and operators	<p>No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule or the proposed changes.</p> <p>Any criminal or civil penalty, sanction, or other cause of action created due to the failure to comply with the terms of this rule is established and set forth in Chapter 4104 of the Revised Code.</p>
1301:3-5-09 Conduct of Hearings.	Boiler and pressure vessel owners and operators; steam engineer operators	<p>No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule or the proposed changes.</p>

**Ohio Dept. of Commerce, Boiler Inspection Rules
BIA Attachment B**

1301:3-5-10 Boiler operator and steam engineer experience requirements.	Prospective boiler and steam engineer operators	<p>The existing rule requires prospective boiler operators and steam engineers to submit written statements regarding their fulfillment of the experience requirements in the rule to the Superintendent of the Division of Industrial Compliance with their applications, and the written statements are required to be verified by a person licensed to operate the equipment the applicant seeks to operate. These requirements are unchanged in the proposed amendment to this rule, and the proposed amendment does not add a new or increased adverse impact on the affected parties.</p> <p>The application fee for applicants for steam engineer, high pressure boiler operator, or low pressure boiler operator licenses is \$99.00. The fee for each original or renewal steam engineer, high pressure boiler operator, or lower pressure boiler operator license is \$72.00.</p>
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BIA ATTACHMENT C

Boiler Stakeholder List

National Board of Boiler & Pressure Vessel Inspectors
information@nationalboard.org

American Society of Mechanical Engineers
infocentral@asme.org

NILUPE, Inc.
T. Butler
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Buckeye Association of School Administrators
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Ohio Manufacturers Association
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