



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Agency Contact Info: Aniko Nagy - (614) 466-3293

Regulation/Package Title: Specific Safety Requirements of the Ohio Bureau of Workers' Compensation for Window Cleaning

Rule Number(s): Chapter 4123:1-17 of the Administrative Code (7 rules)

Date: July 23, 2019

**Rule Type:**

- ☐ New  
☐ Amended

- ☒ 5-Year Review  
☐ Rescinded

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 all regulations 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.

### **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 this chapter 4123:1-17 of the Administrative Code is to provide safety for life, limb, and health of employees involved in window cleaning in the state of Ohio.

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The rules of Chapter 4123:1-17 are due for five-year rule review under Section 119.032 of the Revised Code. The rule review date for the rules is October 1, 2019. BWC performed a five-year rule review of the rules in 2014, at which time BWC recommended no changes to these rules. Legal Operations reviewed the content of the rules and have identified no changes to the rules indicated below.

No Change rules:

4123:1-17-01 Scope and definitions.

4123:1-17-02 Ladders.

4123:1-17-03 Swinging scaffolds.

4123:1-17-04 Roof car suspended platforms – window cleaning.

4123:1-17-05 Boatswain's chairs.

4123:1-17-06 Safety belts, safety harnesses, lifelines and lanyards.

4123:1-17-07 Miscellaneous requirements.

**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?**

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

No.

**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 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 (VSSR), 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 window cleaning industry injuries and applications for additional awards due to violations of these rules.

**Development of the Regulation**

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**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.*

Personnel from the BWC Division of Safety and Hygiene met to review these rules.  
The review process used the following major principles:

- If the standard complies with the BWC safety rule and complies with OSHA, keep the BWC safety rule as is.
- If complying with BWC safety rule might violate OSHA, change BWC safety rule.
- If the standard does not exist in BWC safety rule now but is in OSHA, keep BWC safety rule as is.

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

Not Applicable.

**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) 4123:1-17 Specific Safety Requirements and the Occupational Safety and Health Administration (OSHA) 29 CFR 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 activities in the window cleaning industry.

**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?**

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OAC 4123:1-17 Window Cleaning 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 Joint Committee on Agency Rules Review (JCARR) process. Enforcement of the rules is through the Ohio Industrial Commission, as assisted by reports from the BWC Safety Violation Investigation Unit.

**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 in the window cleaning industry in the state of Ohio.

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

The adverse impact is identified after thorough investigation of each individual accident claimed to be the result of safety violations in the workplace.

**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 expected adverse impact from this regulation varies from case to case; therefore, it is not possible to quantify the exact impact of any factors. If an injured worker’s claim results from an employer’s violation of one of these rules, the employer must pay an additional penalty to the injured worker.

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

Ohio employers are required by Federal Law, Safety Requirements and the Occupational Safety and Health Administration (OSHA), to comply with safety measures for Ohio workers. BWC is also mandated by the same to develop safety regulations for Ohio employers.

**Regulatory Flexibility**

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**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 (SSR). 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 (VSSR). 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 [SafetyGRANTS 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.

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