



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information:

Aaron Johnston, aaron.johnston@com.state.oh.us

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

Historical Boiler Rules

Rule Number(s): 1301:3-4-01 to 1301:3-4-11, 1301:3-4-20

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/ 2 rules (FYR? Yes)

Amended/ 10 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Rescinded/___ rules (FYR?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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

The historical boiler rules establish the procedures for the operation of historical boilers in Ohio. These rules set forth the licensing requirements for historical boiler operators, the means by which historical boilers may be certified for operation, the operational and inspection requirements for the historic boilers, the required fees, and the means by which licenses or certificates may be revoked.

The proposed amendments are minimal and deal, nearly exclusively, with grammatical or stylistic changes or clarify prior language. One of the, if not only, substantive changes proposed in this rule package involves establishing a deadline by which applicants may make use of the grandfathering provision found in rule 1301:3-4-20 of the Administrative Code. The Division, however, has not received a request for a license by use of the grandfathering provision in over a decade, thereby indicating that the industry is unlikely to find this amendment controversial.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

- 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.**

Sections 4104.34, 121.22(F), and 119.03 of the Revised Code.

- 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, this regulation does not implement a federal requirement. N/A.

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

N/A.

- 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)?**

Historical boilers are steam boilers of riveted construction that are preserved, restored, or maintained for hobby or demonstration purposes, and are generally used to educate the public about the significance of boilers in the development of this country. But if improperly maintained or operated, these boilers have the potential to explode and cause catastrophic damages and injuries. These regulations were enacted in 2002, for example, following a 2001 historical boiler explosion that killed five people. The rules protect the health and safety of all Ohioans, with minimal effect upon the industry.

To prevent unsafe conditions from occurring, the historical boiler regulations require historical boilers to be equipped with certain safety devices, to be inspected and certified before initial use, to be properly operated and maintained, to be operated by licensed personnel, and to be submitted to periodic safety tests. When a boiler meets all safety standards, a certificate of operation is issued. If a boiler is unsafe or does not meet the required safety criteria, the Historical Boiler Licensing Board may suspend or revoke the boiler's certificate of operation.

These regulations also establish the criteria to obtain a license to operate historical boilers in places open to the public. Even a boiler that has passed inspection may, during the course of operation, experience a low-water event or other dangerous situation. Licensing of historical boiler operators ensures that those operating historical boilers have the education, training, and experience to properly respond in the event of a dangerous situation.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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

The Board will measure the success of these regulations by eliciting feedback from historical boiler operators, owners, and applicants on the ease with which inspections are scheduled and conducted as well as the ease with which the application process can be completed. The Board will also measure success by verifying that historical boilers are operated in Ohio without incident.

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.

See Attachment A for list of stakeholders. Stakeholders were contacted via e-mail on 7/22/19.

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

There was no feedback during the early stakeholder outreach.

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?

These rules are based upon industry standards and generally accepted engineering standards and practices. Furthermore, the rules are approved by the Historical Boiler Licensing Board, which consists of industry experts. No other scientific data was used.

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?

To begin, the Board is statutorily mandated to adopt rules concerning the criteria to be used when inspecting historical boilers as well as standards for maintenance and safe operation of such boilers. Moreover, the Board is also statutorily mandated to issue licenses to operate historical boilers to persons who meet the requirements of section 4104.35 of the Revised

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Code. Given these statutory mandates, the Board considered alternative regulations but ultimately determined that these regulations strike the proper balance between preserving the health, safety, and welfare of the public with the potential burden to owners and operators to maintain compliance with such standards.

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.

These rules are not appropriate for performance-based regulatory review.

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

The Historical Boilers Licensing Board has exclusive rule-making authority regarding the inspection of historical boilers and licensing of historical boiler operators, whereas the division of industrial compliance is charged with inspection of “modern-day” boilers. Rules concerning modern day boilers are drafted by the Board of Building Standards. The Historical Boilers Licensing Board reviewed potentially relevant portions of the Ohio Revised Code and Ohio Administrative Code dealing with boilers to verify that these rules do not duplicate existing Ohio regulation, and no such duplication was found.

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.

Because of the few changes to the existing rules, little outreach to the industry will be required. The Board and the Boiler section are easily accessible for questions via internet, phone, and e-mail. The Board also sends out a newsletter to interested parties.

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

The impacted business community consists of owners and operators of historical boilers.

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

The adverse impact consists of certification and license fees, and personnel time.

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.

For historical boiler owners, they will incur negligible personnel costs to maintain a log book containing identifying information about the boiler, detailing the operating history, maintenance, and repair of the boiler; detailing adherence to certain safety requirements; and listing of the events and dates where the boiler was operated. The owner will incur personnel and operating costs prior to the initial certification of the historical boiler by submitting to certain safety tests and inspections.

Historical boiler owners will also incur personnel costs in conducting a triennial test and will incur a triennial inspection fee for the operating certificate of \$150.

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

The Board determined that the regulatory intent justifies the potential adverse impact to the regulated business community because these expenses are minimal and are outweighed by the important safety interest ensured by the historical boiler rules.

Regulatory Flexibility

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

The rules that apply are solely based on the type of boiler being operated or licensed without regard for the size of the business. Moreover, these regulations only apply to the operation of historical boilers kept or maintained for hobby or demonstration purposes.

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?

The Board has a high compliance rate and in the extremely rare case where an issue arises, the Board works with the boiler operator to achieve compliance.

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

The Boiler section and the Board are easily accessible for questions via internet, phone, and e-mail. The Boiler section strives to assist small businesses into achieving and maintaining compliance with requirements of Chapter 4104. of the Revised Code and Chapter 1301:3-4 of the Ohio Administrative Code.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

BIA ATTACHMENT A

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
tbutler@niulpe.org

Buckeye Association of School Administrators
ash@basa-ohio.org

Ohio Manufacturers Association
oma@ohiomfg.com

Cincinnati Insurance Companies
Wayne Pinney
wayne_pinney@cinfin.com

CAN Insurance Companies
Steve Schneeberger
steve.schneeberger@cna.com

Factory Mutual Insurance Company
Phillip Cole
phillip.cole@fmglobal.com

The Hartford Steam Boiler Inspection and Insurance Company
Patrick Jennings
patrick_jennings@hsb.com

OneCIS America Insurance Company
Ed Whittle
ed.whittle@onecis.com

Travelers Risk Control Division Boiler & Machinery
C. Kent
ckent@travelers.com

XL Insurance America, Inc.
Gary Cox
gary.cox@bpcllcqa.com