



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Commerce, Division of Industrial Compliance, Wage and Hour Administration

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

Employment of Minors in Occupations Hazardous or Detrimental to Health and Well-Being

Rule Number(s): O.A.C. 4101:9-2-01 through 4101:9-2-25

Date of Submission for CSI Review: 11/26/24

Public Comment Period End Date: 12/10/24

Rule Type/Number of Rules:

New/___ rules

No Change/ 22 rules (FYR? Y)

Amended/ 1 rules (FYR? ___)

Rescinded/ 2 rules (FYR?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 Ohio Revised Code section 4109.05, the rules set forth in Chapter 4101:9-2 of the Ohio Administrative Code protect minors from being employed in occupations that are hazardous or detrimental to their health and well-being. No changes are being made to the rules in this rule package, except an amendment to rule 4101:9-2-16 of the Ohio Administrative Code is being proposed to fix a typo and delete an extra space and rules 4101:9-2-24 and 4101:9-2-25 of the Ohio Administrative Code are being proposed for rescission due to being duplicative of requirements already set forth in R.C. 4109.05.

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.**

Section 4109.05 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. No.

5. **If the regulation implements a federal requirement, but 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)?**

Pursuant to section 4109.05 of the Revised Code, the Director of Commerce, after consulting with the Ohio Department of Health, is required to create, maintain, and enforce rules that prevent the employment of minors in any occupations that are hazardous or detrimental to their health and well-being.

The rules, which are promulgated pursuant to the requirements of section 4109.05 of the Revised Code, are modeled after the prohibited occupations that are listed in the federal Fair Labor Standards Act (FLSA), which have been in place for over thirty years.

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

The rules are successful when the minor workforce in Ohio is being kept safe while maximizing the opportunity of minors to gain employment in occupations that are not hazardous or detrimental to their well-being.

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.

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.

A list of stakeholders is attached. Stakeholders were contacted by email.

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

At present, the Division has not received any input from stakeholders regarding this 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?**

The rules, which are promulgated pursuant to the requirements of section 4109.05 of the Ohio Revised Code, are modeled after the prohibited occupations listed in the FLSA. In interpreting and applying the FLSA, the U.S. Department of Labor collects and reviews all relevant statistical and empirical employment data. The industries subject to these requirements are well aware of these FLSA standards as they have been in place for more than 30 years.

- 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?**
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

The Agency did not consider regulatory alternatives, as the rules are modeled after the FLSA standards, and, as such, affected industries are familiar with these standards. Moreover, no substantive changes to these standards are being proposed.

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

The minor rules are authorized by section 4109.05 of the Revised Code. Commerce, in conjunction and coordination with the Ohio Department of Health, previously conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure there are no other regulations in place pertaining to these specific rules. The Department of Health approved these rules on April 1, 2019, and no substantive changes are proposed in this five-year rule review.

- 14. 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.**

Commerce previously notified affected industries when changes were made to the minor labor rules. Given that these rules are modeled after the FLSA standards, and no substantive changes are being proposed, no additional notification is required.

Adverse Impact to Business

- 15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**

Employers who wish to employ minors in certain occupations that could be hazardous or detrimental to a minor's well-being.

- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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 main potential adverse impact is the additional cost of hiring an adult versus a minor in hazardous or detrimental occupations. The potential adverse impact described above is minimal and cannot be quantified.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The only proposed changes to the rules in this rule package are non-substantive, fixing typos and rescinding rules with requirements that are already set forth in statute. Moreover, given that these rules are drafted to conform with the Fair Labor Standards Act, no changes could be proposed to reduce any potential regulatory burden while remaining consistent with the FLSA.

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

The rules, which are promulgated pursuant to the requirements of section 4109.05 of the Ohio Revised Code, are modeled after the prohibited occupations that are listed in the FLSA, which have been in place for over thirty years. As such, these rules do not independently have an adverse impact on the regulated business community.

Moreover, the minimal potential adverse impact is justified in order to ensure the safety and well-being of the minor workforce. It is noteworthy that no stakeholders—including those employers who could be adversely impacted by these rules—have voiced opposition to these proposed rule changes.

Regulatory Flexibility

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

The rules exempt some hazardous agriculturally related occupations if the minor is working on a family-owned farm.

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 compliance and enforcement actions established by these rules do not apply fines or penalties for paperwork violations. The penalties for noncompliance are criminal in nature and determined by statute.

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

Commerce is easily accessible for information or questions via the internet, phone, and e-mail. Commerce strives to assist small businesses that wish to employ minors in achieving and maintaining compliance with requirements of Chapter 4109. of the Ohio Revised Code and Chapter 4101:9-2 of the Ohio Administrative Code through Industry meetings, roundtable sessions, and other outreach events.

Wage and Hour Stakeholder List

Ohio Association of Agricultural Educators

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Ohio Department of Job and Family Services

help-desk-ocf@jfs.ohio.gov

Child Labor Public Education Project

University of Iowa Labor Center

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Ohio Bureau of Workers' Compensation

Fax: 866-336-8352

Ohio Association of Child and Youth Care Professionals

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Child Welfare League of America

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Ohio Department of Health

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Voices for Children

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