

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: Boiler Inspection

Rule Number(s): 1301:3-5-01 to 1301:3-5-10

Date: 3/15/2014

Rule Type:

New

Amended

5-Year Review

Rescinded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 draft regulations govern the inspections of boilers in Ohio, and set forth the inspection requirements, the means of acquiring and maintaining a certificate of operation, the required course of action where unsafe conditions are found, the powers of the Ohio Department of Commerce Division of Industrial Compliance, and the hearing process. The regulations also

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set forth the requirements for obtaining a boiler operator's license. See the Overview of Changes, Ex. A.

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

R.C. 4104.06, R.C. §§ 4104.10 – 4104.19.

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.

N/A

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

N/A

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)?

Pursuant to R.C. Chapter 4104, the Boiler section in the Division of Industrial Compliance is charged with establishing rules relating to operation, inspection, construction, installation, and repair of boilers while protecting the health, safety and welfare of Ohioans. Improperly installed, maintained, or operated boilers have the potential to explode and cause catastrophic damages and injuries.

This need to protect the public became apparent shortly after the conception of the steam engine in the late 18th century. The combination of high heat and extreme pressure of boilers made them prone to explosions: any crack in the boiler mechanism, whether from manufacturing or maintenance defects, exposed the super-heated and super-pressurized steam and water to the atmosphere and caused rapid decompression and a violent blast. In the 19th century there were thousands of boiler explosions in the United States and Europe, which resulted in many deaths and injuries.

The American Society of Mechanical Engineers (ASME) led the way with researching and establishing proper construction and maintenance guidelines for boilers. ASME is a non-profit corporation established in 1880, whose mission is to enhance both the global competitiveness of U.S. business and the U.S. quality of life by promoting and facilitating voluntary consensus standards and conformity assessment systems, and safeguarding their integrity. ASME published its Boiler & Pressure Vessel Code (BPVC) in 1915, which was later incorporated into laws in most US states and territories and Canadian provinces,

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including Ohio. To prevent unsafe conditions from occurring, boilers are fitted with safety devices designed to prevent dangerous boiler operating conditions from turning into disasters. The only way one can be confident these safety devices will function properly is to regularly perform required maintenance, testing, and inspection.

The Boiler section enforces the rules relating to inspection, construction, installation, operation, and repair of boilers. These regulations require both internal and external examinations of the boilers and all operating aspects of them. If a boiler is unsafe or does not meet the required safety criteria, the superintendent may order its operation to cease until the necessary corrective action is made. When a boiler meets all safety standards, a certificate of operation is issued. Boiler operators must be licensed and must meet experience and training standards. These regulations protect the health and safety of all Ohioans, with minimal affects upon the industry.

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

The Department of Commerce believes that these regulations are successful when they ensure the safety of Ohio residents and the individuals who operate the boilers and pressure vessels. The rule package being proposed is substantially the same as the rules which have been in place for many years. Commerce is not proposing any substantive changes and only minor corrections. Commerce believes that these regulations continue to demonstrate every year that they are successful because they continue to ensure the safety of the public.

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.

See Exhibit B for list of stakeholders. Stakeholders were contacted via e-mail on June 14, 2012 and again on January 14, 2014.

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

The stakeholders were supportive of all of the rules and suggested no changes.

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?

This rule depends upon the industry standards established by the American Society of Mechanical Engineers (“ASME”), who utilize the latest scientific processes to establish their standards. ASME standards are written by industry experts, who bring with them years of experience and education to create a scientifically accurate method of measurement.

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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 Boiler section rules are governed by R.C. Chapter 4104. The Revised Code mandates that Commerce adopt rules necessary for implementing the provisions of Chapter 4104, and requires the boiler rules to be based upon and follow generally accepted engineering standards, formulae, and practices. R.C. 4104.02(E). These rules are based on the standards established by ASME, which is the industry leader, and the Boiler section received no stakeholder or industry input requesting rule changes or alternatives. The Boiler section believes the existing rules are operating efficiently.

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.*

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

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

The Boiler section consulted with the Board of Building Standards (who conducted the review of the rules in O.A.C. Chapter 4101:4) to ensure no duplication of rules.

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.

Because of the few changes to the existing rules, little outreach to the industry will be required. The Boiler section is easily accessible for questions via internet, phone and e-mail.

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;

The impacted business community consists of boiler owners and operators.

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

For boiler owners, the adverse impact consists of the certificate of operation fees, personnel time to complete applications and to conduct pre-inspection maintenance, and operating costs for any boiler closures (either as the result of inspection or as the result of unsafe conditions). For boiler operators, the adverse impact consists of the examination fee, application fee, and tuition costs if they are lacking the requisite experience. Since these requirements already exist under current regulations no new adverse impact will result from the proposed rule package.

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.

Boiler owners will be required to provide personnel to perform a pre-examination procedure. This procedure takes less than one day, and thus the cost to any individual business is the personnel cost for that one day per inspection period (yearly, biennially, or quintennially), which is too minimal to estimate. Where a boiler is found to be unsafe and in need of repair, boiler owners will incur unknown operational costs during the shut-down and unknown repair costs.

For individuals seeking a boiler operator’s license, the application fee is \$75.00 and the examination fee is \$100.00. Any person who does not possess 2000 hours of experience will need to take a certain number of education courses. These courses are usually taught by an adult vocational facility, where the cost of tuition varies greatly and thus cannot be estimated.

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

Section 4101.02 of the Revised Code requires rules to be made in accordance with the industry standards for the operation and maintenance of boilers, and for ascertaining the safe

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working pressures. The Agency is therefore required to adhere to these industry standards which, by necessity, impose a certain level of adverse impact to business.

Regulatory Flexibility

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

No. The rules that apply are solely based on the type of boiler being operated without regard for the size of the business. However, the Boiler section works closely with the boiler operator to achieve compliance.

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?

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

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

The Boiler section is 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 R.C. Chapter 4104 and O.A.C. Chapters 1301:3-4 and 1301:3-5.