

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: Wage and Hour, Employment of Minors in Occupations Hazardous or Detrimental to Health and Well-Being

Rule Number(s): 4101:9-2-01 through 4101:9-2-24

Date: 12/11/2013

Rule Type:

New

XX 5-Year Review

Amended

Rescinded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.

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 which are hazardous or detrimental to their health and well-being.

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The package contains 24 no-change rules which are being reviewed as party of the five-year rule review process. See “Attachment B” for a rule-by-rule breakdown.

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

R.C. 4109.05

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. No.

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. Section 4109.05, the Ohio General Assembly passed legislation requiring the Director of Commerce, in conjunction with the Ohio Department of Health, 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 R.C. 4109.05, are modeled after the prohibited occupations that are listed in the federal Fair Labor Standards Act (FLSA) and have been in place for over thirty years.

6. 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.

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.

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Stakeholders were contacted via e-mail on August 1, 2012 and again on September 12, 2012. A list of stakeholders may be found in “Attachment A” of this document.

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

The stakeholders are supportive of this entire no-change rule package and suggested no amendments, recessions, or new rules. These stakeholders consist of all persons potentially affected by the proposed regulation, and include businesses, trade associations, governmental agencies, employee and employer groups, and child/minor advocates (“the Industry”).

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?

The rules, which are promulgated pursuant to the requirements of R.C. 4109.05, 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 Industry is well aware of these FLSA standards as they have been in place for more than 30 years.

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 Agency did not consider regulatory alternatives, as the rules are modeled after the FLSA standards, and the Industry is supportive of this entire no-change rule package and suggested no amendments, recessions, or new rules.

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. These rules are not appropriate for performance based regulations.

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

The minor rules are authorized by R.C. 4109.05. Commerce, in conjunction and coordination with the Ohio Department of Health, 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 Director of the Department of Health approved these rules on December 10, 2013.

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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.

Commerce will notify the Industry about the rule package. However, given the no-change nature of these rules, there will be little to no impact to community served.

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 who wish to employ minors in certain hazardous or detrimental occupations.

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

The main potential adverse impact is the additional cost of hiring an adult versus a minor in hazardous or detrimental occupations.

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 potential adverse impact described above is minimal and cannot be quantified.

15. 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 R.C. 4109.05, are modeled after the prohibited occupations that are listed in the FLSA and have been in place for over thirty years.

The minimum potential adverse impact is justified in order to ensure the safety and well-being of the minor workforce. It is noteworthy that all stakeholders – including those

employers who could be adversely impacted by these rules – are supportive of this entire rule package.

Regulatory Flexibility

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

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

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 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.

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

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

ATTACHMENT A

List of Stakeholders

Ohio Association of Agricultural Educators
Ohio Department of Job and Family Services
Child Labor Public Education Project
Ohio Bureau of Worker's Compensation
Ohio Association of Child and Youth Care Professionals
Child Welfare League of America
Home School Legal Defense Association
Ohio Department of Health
Voices for Children
Aramark
Automotive Service Association of Ohio, Inc.
Boys and Girls Club of America
Cincinnati Museum Center
Columbus Zoo and Aquarium
Cleveland Zoological Society
Columbus and Franklin County Metro Parks
Ohio Library Council
North American Employer's Council, Inc.
Ohio Grocers Association
Ohio Parks and Recreation Association
Cedar Fair Entertainment Company

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