

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: Historic Boiler Rules

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

Date: 2/3/2014

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Rescinded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 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 the historical boiler may be certified for operations, 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 either

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

CSIOhio@governor.ohio.gov

correct typographical or grammatical errors, or provide an easier means for compliance with the inspection requirements.

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

R.C. 4104.34, 121.22(F), and 119.03.

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)?

Historical boilers are used for display and demonstration purposes, to educate the public about the significance of boilers in the development of this country. Pursuant to R.C. Chapter 4104, the Ohio Department of Commerce Boiler section is charged with establishing rules relating to the operation, inspection, construction, installation, and repair of historical boilers while protecting the health, safety and welfare of Ohioans. Although only used for educational purposes, historic boilers are operated before crowds of people. If improperly maintained or operated, these boilers have the potential to explode and cause catastrophic damages and injuries.

To prevent unsafe conditions from occurring, the Agency requires 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 submit 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 Board may suspend or revoke its certification. These regulations were enacted in 2002, following a 2001 historical boiler explosion that killed five people. The rules 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?

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

CSIOhio@governor.ohio.gov

The Agency will deem these rules successful when historical boiler operators are able to obtain and maintain certifications and licenses, while continuing to ensure boilers are properly operated to keep Ohioans safe.

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

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 the agency 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 industry standards, and the Board received no stakeholder or industry input requesting rule changes or alternatives. The Board 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?

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

CSIOhio@governor.ohio.gov

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 Board and the Boiler section are 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 owners and operators of historical boilers.

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

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

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/or 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/operating certificate of \$150.

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 installation, operation, maintenance, and inspection of historical boilers. The Agency is therefore required to adhere to these standards which, by necessity,

impose a certain level of adverse impact to business. These expenses are minimal and are outweighed by the important safety interest ensured by the historical boiler rules.

Regulatory Flexibility

16. 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.

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 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.

18. 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 R.C. Chapter 4104 and O.A.C. Chapters 1301:3-4.