



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Chapter 1301:3-8 Welders and Brazers

Rule Number(s): 1301:3-8-01; 1301:3-8-02; 1301:3-8-03

Date of Submission for CSI Review: 3/23/2020

Public Comment Period End Date: 4/6/2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 3 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Rescinded/___ rules (FYR?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.

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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.

The rules define key terms applicable to the industry, establish certification qualifications for welders and brazers, as well as performance qualifications and proof of continuity requirements for those groups. Proposed amendments to the regulations consisted exclusively of grammatical, stylistic, or other non-substantive changes intended only to improve clarity of the rules.

The most notable proposed amendment was to divide the content previously contained within the definition of “Proof of Continuity” found in paragraph (F) of rule 1301:3-8-01 of the Administrative Code into two separate definitions: one for “proof of Continuity” and another for what constitutes lapse of proof of continuity:

“Proof of Continuity” shall mean documentation sufficient to establish that a welder or welding operator who has established performance qualification in accordance with ASME Boiler & Pressure Vessel Code, Section IX: “Qualification Standard for Welding and Brazing Procedures, Welders, Brazers, and Welding and Brazing Operators,” 2010

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edition, July 1, 2010, ASME BPVC, Section IX, has not allowed his or her performance qualification to lapse.

Proposed O.A.C. 1301:3-8-01(F).

Lapse of performance qualification shall mean that one of the following conditions has occurred:

(1) When a welder or welding operator has not welded with a process during a period of six months or more, his or her qualification of that process shall expire; unless, within the six-month period, prior to the expiration of qualification:

(a) A welder has welded using a manual or semiautomatic welding process that will maintain the qualification for manual and semiautomatic welding with that process; or

(b) A welding operator has welded with a machine or automatic welding process that will maintain his or her qualification for machine and automatic welding with that process.

(2) When there is a specific reason to question a welder or welding operator's ability to make welds that meet the specification, the qualifications that support the welding he or she is doing shall be revoked. All other qualifications not questioned remain in effect.

Proposed O.A.C. 1301:3-8-01(I).

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 4104.44 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, the regulation does not implement a federal requirement. No, the proposed regulation is not 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.

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

N/A

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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)?

The public purpose for this regulation is to promote the health, safety, and welfare of the public by helping to ensure welding and brazing work is performed in accordance with accepted industry standards by qualified individuals. Moreover, section 4104.44 of the Revised Code requires the Superintendent of the Division of Industrial Compliance to adopt rules outlining the process for submitting welding and brazing procedure specifications procedure qualification records, and performance qualification records for building services piping for review to the Superintendent.

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

The Ohio Department of Commerce (“Department”) will measure the success of these regulations by monitoring the performance of work completed pursuant to these regulations and requesting feedback on the regulations from those working in construction and related fields.

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.

Please see attached stakeholder list.

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

At present, none has been received.

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 Department relied upon the education, training, and experience of industry experts responsible for the drafting of the industry-accepted standard for welding and brazing: the ASME Boiler and Pressure Vessel Code, Section IX. Moreover, section 4104.44 of the

Revised Code mandates that all welding and brazing of metallic piping systems be performed in accordance with Section IX of the ASME Boiler and Pressure Vessel Code.

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?

The Department is not permitted to adopt an alternative regulation because section 4104.44 of the Revised Code mandates that all welding and brazing of metallic piping systems be performed in accordance with Section IX of the ASME Boiler and Pressure Vessel Code.

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.*

The Department considered adopting a performance-based regulation, but ultimately determined that given the nature of the industry being regulated, as well as the potential for injury were welding or brazing work to fail, a performance-based regulation was not appropriate.

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

The Department reviewed other potentially relevant sections of the Ohio Administrative Code and did not find any regulations duplicative of these rules.

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 no substantive changes are proposed in this five-year rule-review package, the Department does not foresee any issues with implementation of these amendments. As such, the Department will continue to administer the welding and brazing program in a manner consistent with past practice and will address any questions raised by interested parties as they may arise following implementation of these regulations.

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 scope of the impacted business community includes individuals performing, and seeking to perform, welding and brazing work as well as owners seeking to have welding and brazing work performed.

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

Possible adverse impacts associated with the regulation includes payment of a fee, maintenance of records, and the reporting of information to the Superintendent of the Division of Industrial Compliance.

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 fees for welding and brazing include a procedure specification fee of \$60.00 and procedure qualification records fee of \$15.00. The potential adverse impact associated with maintenance of records demonstrating welding and brazing performance qualifications as well as submission of such records, whether to a project site or to the Department, will vary from individual to individual, but ultimately is only likely to result in a minimal expenditure of time.

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

The Department determined that the regulatory intent justifies the adverse impact to the regulated business community because the minimal adverse impact associated with the documentation of welding and brazing performance qualifications and proof of continuity as well as the costs of preserving and filing such documentation pursuant to these rules’ requirements is warranted when compared to the benefit derived therefrom of ensuring that welding and brazing work is performed competently, by individuals that have remained current with their respective performance qualifications, thereby ensuring the safety of the public. Moreover, this adverse impact is mandated by section 4104.44 of the Revised Code.

Regulatory Flexibility

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

Given the potential risk involved if welding or brazing work should fail, an exemption from the compliance standards involved for small businesses was not appropriate. Moreover, neither section 4104.44 of the Revised Code nor ASME Boiler and Pressure Vessel Code, Section IX provide an exemption for small businesses.

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 Department routinely offers waivers of fines and penalties for such paperwork violations.

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

Members of the Department's staff are available to assist small businesses with compliance matters as well as respond to questions or concerns voiced by the regulated business community.

WELDING/BRAZING STAKEHOLDERS

1. Operator Training Committee of Ohio, Inc.
3972 Indianola Ave.
Columbus OH 43214
otco@otco.org
2. Cleveland Plumbing Industry
950 Keynote Circle #40
Cleveland, OH 44131
Attn: Tom Wanner
Email: twanner@mapic.org
3. Plumbing-Heating-Cooling Contractors of Ohio
20040 Carolyn Ave.
Rocky River, OH 44116
Attn: Rocco Fana
Email: rocco@phccohio.org
4. Cincinnati Master Plumbers Association
11020 Southland Road
Cincinnati, OH 45240
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Email: cmpa@cinci.rr.com
5. Ohio Association of Plumbing Inspectors
PO Box 156
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Attn: Ron Branson
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6. Association of Plumbing & Heating Contractors
684 Colony Drive
Westerville, OH 43081
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7. Mechanical Contractors Association
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