



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Carrie Kuruc, Director

## Business Impact Analysis

Agency, Board, or Commission Name: Department of Commerce

Rule Contact Name and Contact Information:

Aaron Johnston- (614) 644-3297

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

Manufacturing Mentorship Program

Rule Number(s): 4101:9-2-02.1; 4101:9-2-02.2

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

Public Comment Period End Date: 4/6/2020

Rule Type/Number of Rules:

New/ 2 rules

No Change/      rules (FYR?     )

Amended/      rules (FYR?     )

Rescinded/      rules (FYR?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):**

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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.*

Rule 4101:9-2-02.1 establishes the criteria by which an employer may demonstrate that they have satisfied the requirements of section 4109.22 of the Revised Code. It provides:

#### **4101:9-2-02.1 Manufacturing Mentorship Program**

(A) Employers shall maintain records sufficient to document the satisfaction of all criteria established by section 4109.22 of the Revised Code.

(B) Documents maintained pursuant to paragraph (A) of this rule shall be maintained by the Employer for no less than 2 years following the employment of the minor or after the minor turns 18, whichever is later.

(C) Employers shall make the documents maintained pursuant to paragraph (A) of this rule available to the Director of Commerce or the Director's designee upon request.

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(D) In the event the Director or the Director's designee is prohibited by any employer from carrying out the intent of this section, the Director or the Director's designee may issue subpoenas and compel attendance of witnesses and production of documents, including papers, books, accounts, payrolls, documents, records, and testimony relating and relevant to the Director's investigation.

(E) Upon a finding that an employer's program does not satisfy the criteria established by section 4109.22 of the Revised Code, the Director may suspend or revoke the employer's program, fine the employer in accordance with section 4109.99(F) of the Revised Code, or both.

Rule 4101:9-2-02.2 defines what tools a minor sixteen or seventeen years of age may use when participating in the Manufacturing Mentorship Program.

#### **4101:9-2-02.2 Tools Permitted for Participants of the Manufacturing Mentorship Program**

The following tools shall not be used by any minors sixteen or seventeen years of age unless they are participants in the manufacturing mentorship program as prescribed by this chapter:

(A) General tools

(1) Pipe and bolt threading machine;

(2) Pipe nipple and automatic pipe nipple machines;

(3) Certain electric carts used as a means of transportation in large industrial plants, and at railroad stations as long as they are not driven on public roads;

(4) Riding mowers or golf carts in a warehouse setting as long as they are not driven on public roads;

(5) Contour measuring instruments;

(6) Multi-axis type robotic equipment;

(B) Tools only permitted with conditions

(1) Welding tools only while under direct supervision;

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- (2) Waterjet cutting machines with devices for fully automatic feeding and ejection and with a fixed guard that prevents operators or helpers from placing any part of their bodies in the point-of-operation area;
  - (3) Computer numerical control (CNC) machines while under direct supervision;
  - (4) Production press machines that are not already listed as a specific prohibition or exception in Chapter 4101:9-2 of the Administrative Code, so long as those devices include fully automatic feeding and ejection and a fixed guard that prevents operators or helpers from placing any part of their bodies in the point-of-operation area;
  - (5) Plastics molding machines when fitted with the proper guarding and are not manually fed;
  - (6) Plastics extruders while under direct supervision;
  - (7) Soldering irons while under direct supervision;
- (C) Tools restricted by type of use

(1) Certain tools that require the placing of material on a moving chain or in a hopper or slide for automatic feeding, such as:

- (a) Band resaw only when it incorporates the use of a chain feed and there is no direct interaction with the tool;
- (b) Automatic nailing machine only when it incorporates the use of a hopper, belt, or chain feed and there is no direct interaction with the tool;
- (2) Automatic wire-stitching machines only when it incorporates the use of a hopper or chain feed and there is no direct interaction with the tool;
- (3) Tools designed for carrying or moving nonhazardous material from one machine to another (hike-a-way).

(D) Miscellaneous Tools

Any other tools that are permitted under the Fair Labor Standards Act and are not specifically prohibited by section 4109.05 of the Revised Code or the rules adopted thereunder.

**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 4109.22 of the Revised Code authorizes the Department to adopt the rules proposed in this rule package.

**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 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

**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 General Assembly has statutorily mandated that the Director of the Department of Commerce adopt rules specifying a list of the tools that a minor who is sixteen or seventeen years of age who is employed under the mentorship program may operate during the minor's employment in the manufacturing occupation. R.C. 4109.22(D). In accordance with this statutory mandate, the Director proposes these rules to ensure participating employers and employees in the manufacturing mentorship program have satisfied the requirements of section 4109.22 of the Revised Code and that the tools and equipment utilized by sixteen- and seventeen-year-old minors that are participating in the mentorship program can be used in a safe manner with appropriate supervision and oversight by the employer mentoring such minors.

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

The Department will measure the success of this regulation by eliciting feedback from employers and participants in the manufacturing mentorship program on the list of tools that participants are permitted to use while working in the program, as well as monitoring program participation to verify whether any permitted tools are involved in work-place injuries or accidents.

**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.*

The Department submitted drafts of the regulation to the Ohio Manufacturers' Association ("Association") who then gathered feedback from its members on the proposed regulations. This process began with an in-person meeting with members of the Association in August 2019—two months before the enabling statute, section 4109.22 of the Revised Code, became effective—to gather input and recommendations on the program prior to these rules being drafted. The initial draft of these rules was submitted to the Association by email in November 2019. Following comments by the Association, a revised draft was submitted in January 2020.

The final draft of the rules was also sent to the Association, which had this to say: "We are pleased to see that the department incorporated the majority of the OMA feedback in its last draft. At this time, we have no further suggestions and are pleased to offer our support to the current draft rules." In addition to voicing its approval of the current draft of the rules, the Association also requested that Division establish a uniform system for documenting satisfaction of program criteria.

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

The stakeholders provided comments to the proposed regulation in the attached letter (see attachment). In response to the input provided by stakeholders, the proposed rules were revised to remove references to specific brands of tools.

**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 training, education, and experience of employers operating in the manufacturing industry to provide input on the proposed regulations, including what tools and equipment should and should not be used by a participant in the program.

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**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?**

Broadly speaking, the Department was statutorily obligated to adopt rules specifying a list of tools minors sixteen or seventeen years of age who were employed under the mentorship program would be permitted to operate. As such, it was not possible to consider alternative regulations in the broader sense of whether a list of tools should or should not be established within the regulations. As for the potential for alternative regulations as to specific tools or categories of tools, the Department evaluated numerous types of equipment and tools that participants of the manufacturing mentorship program might use in the workplace. Ultimately, the list proposed by these regulations represented the appropriate balance of ensuring the safety of the workplace and of participants in the program while ensuring that participation in the program would be as enriching and educational to the participants, without unnecessarily restricting the opportunity to gain experience in the industry.

**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.***

Given the nature of the regulation at issue, 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?**

Because the Manufacturing Mentorship Program was established in section 4109.22 of the Revised Code, which only became effective on October 17, 2019, and the Director of Commerce was granted exclusive rulemaking authority with regard to the subject-matter at issue, there was no possibility of duplication of existing Ohio regulations.

**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.**

The Department plans to continue to work collaboratively with the Ohio Manufacturers' Association, and its members, to ensure that the regulated industry remains informed of the implementation and continued operation of the program.

**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**

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The scope of the impacted business community includes employers seeking to employ sixteen- and seventeen-year-old minors participating in the manufacturing mentorship program.

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

The nature of the adverse impact includes the creation, preservation, and maintenance of records documenting the employer's satisfaction of the requirements of section 4109.22 of the Revised Code.

**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 expected adverse impact is likely to be de minimis and require only minimal expenditures of an employer's time to document the satisfaction of the criteria required by section 4109.22 of the Revised Code. The cost of preservation of these records is also expected to be de minimis.

**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 potential for adverse impact to the regulated business community because the benefits gained by improving the effectiveness of the program through proper documentation of program participation as well as helping to ensure the safety of individuals working in the program far outweigh the estimated costs associated with such documentation.

**Regulatory Flexibility**

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

No, the regulation does not provide an exemption or alternative means of compliance for small businesses. The reason no exemption for small businesses was instituted is twofold. First, given the nature of the subject matter being regulated, the concern for safety of sixteen- and seventeen-year-old minors working in the manufacturing industry, and the possibility that they might be utilizing tools and equipment that they otherwise would not be permitted to use were they not participating in the manufacturing mentorship program, it was important to establish a system whereby compliance with the standards established by section 4109.22 of the Revised Code could be verified. Second, the de minimis adverse impact associated

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with complying with this record preservation requirement was unlikely to disproportionately affect 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 waives imposition of late fees or penalties in instances where a regulated person or entity has failed to file a required document or remit payment of a fee timely, especially when such a failure has occurred for the first time.

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

The Department's staff is available to assist all participating employers and employees with compliance matters concerning the manufacturing mentorship program. Moreover, the Department will continue to collaborate with the Ohio Manufacturers' Association and its members to ensure the program is implemented in a thoughtful and productive manner.

## BIA ATTACHMENT A

### **Wage and Hour Stakeholder List**

Ohio Association of Agricultural Educators  
Rachel Scior, President  
[rachel.scior@pickawayross.com](mailto:rachel.scior@pickawayross.com)

Ohio Department of Job and Family Services  
[help-desk-ocf@jfs.ohio.gov](mailto:help-desk-ocf@jfs.ohio.gov)

Child Labor Public Education Project  
University of Iowa Labor Center  
[labor-center@uiowa.edu](mailto:labor-center@uiowa.edu)

Ohio Bureau of Workers' Compensation  
Fax: 866-336-8352

Ohio Association of Child and Youth Care Professionals  
[info@helpingohiokids.org](mailto:info@helpingohiokids.org)

Child Welfare League of America  
[cwla@cwla.org](mailto:cwla@cwla.org)

Ohio Department of Health  
Lance Himes  
[lance.himes@odh.ohio.gov](mailto:lance.himes@odh.ohio.gov)

Voices for Children  
[info@raiseyourvoiceforkids.org](mailto:info@raiseyourvoiceforkids.org)

Aramark  
[aramark-cares@aramark.com](mailto:aramark-cares@aramark.com)

Automotive Services Association of Ohio, Inc.  
[mdougher@asaohio.org](mailto:mdougher@asaohio.org)

Boys and Girls Club of America  
Matt Watrous  
[mwatrous@gbca.org](mailto:mwatrous@gbca.org)

Cincinnati Museum Center  
[information@cincymuseum.org](mailto:information@cincymuseum.org)

## BIA ATTACHMENT A

Columbus Zoo and Aquarium  
Jennifer Koslow  
[jennifer.koslow@columbuszoo.org](mailto:jennifer.koslow@columbuszoo.org)

Columbus and Franklin County Metro Parks  
[info@metroparks.net](mailto:info@metroparks.net)

Ohio Library Council  
Michelle Francis  
[mfrancis@olc.org](mailto:mfrancis@olc.org)

Ohio Grocers Association  
Kristin Mullins  
[kristin@ohiogrocers.org](mailto:kristin@ohiogrocers.org)

Ohio Parks and Recreation Association  
[opra@opraonline.org](mailto:opra@opraonline.org)

Cedar Fair Entertainment Company  
Laurie Tardif  
[laurie.tardif@cedarfair.com](mailto:laurie.tardif@cedarfair.com)

OMA  
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[rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com)

NFIB  
Chris Ferruso  
[chris.ferruso@nfib.org](mailto:chris.ferruso@nfib.org)

Ohio Chamber  
Kevin Boehner  
[kboehner@ohiochamber.com](mailto:kboehner@ohiochamber.com)

Ohio Chamber  
Kevin Shimp  
[kshimp@ohiochamber.com](mailto:kshimp@ohiochamber.com)



December 13, 2019

Ohio Department of Commerce  
77 S. High St., 23<sup>rd</sup> Floor  
Columbus, Ohio 43215

**Re: Manufacturing Mentorship Program DRAFT rules**

Dear Sir or Madam:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to work with the Ohio Department of Commerce and to provide initial feedback on the Department's draft rules for the Manufacturing Mentorship Program (Program). The Program, as you know, was created in House Bill 166 in the 133<sup>rd</sup> General Assembly. This Program has the potential to help build the manufacturing workforce pipeline for the 21<sup>st</sup> century. Thank you for the chance to provide comments.

**4101:9-2-011 COMPLIANCE**

Draft Ohio Administrative Code (OAC) 4101:9-2-011 requires a manufacturer participating in the program to keep certain records for no less than two years following the employment of the minor or after the minor turns 18, whichever is later.

We understand that the Department requires this measure in the event an investigation is ever warranted. Since this is a new requirement for manufacturers, we would ask the Department if there is a sample form that manufacturers could use as a template for the recordkeeping to make the process not only simpler, but also standard from employer to employer.

**4101:09-2-011 COMPLAINT**

Draft OAC 4101:9-2-011 allows for a complaint process against a company for violation of the Program. We would ask that only complaints from parties impacted by an alleged violation of the Program be allowed and investigated. There is a concern that the complaint process could be opened to any individual with issues regarding the company and who might file improper and false complaints as possible retaliation for issues unrelated to the Program.

**4101:9-2-021 TOOL LIST**

Draft OAC 4101:9-2-021 provides a comprehensive list of tools allowed for use by minors who participate in the Program. Regarding naming specific brands of tools such as “Landis” or “Linderman” is there an opportunity to use generic terms regarding these tools so that other brands of the same types of tools would also be permitted? At a minimum, we would suggest using generic terms in these two specific situations.

**4101:09-2-021 RESTRICTED BY TYPE OF USE**

Draft OAC 4101:9-2-021 provides for allowable tools if only used in certain ways or with specific features. After speaking with Department staff, the intent of the rule is clearer. However, manufacturers have expressed concerns regarding the wording of this section. We would ask that the Department rework the wording to make this plainer for those not as well versed in Ohio Administrative Code language.

As the Ohio Department of Commerce continues to develop and edit these draft rules, please notify the OMA of any changes or potential changes. We look forward to continuing this great working relationship as the Manufacturing Mentorship Program moves from aspiration to realization.

Sincerely,



Rob Brundrett  
Director, Public Policy Services



March 10, 2020

***Via Electronic Mail (Dawn.Evarson@com.state.oh.us)***

Ohio Department of Commerce  
Division of Industrial Compliance  
6606 Tussing Road  
Reynoldsburg, OH 43068

Re: Comments – Proposed Rules OAC 4101:9-2-02.1 and 4101:9-2-02.2:  
Manufacturing Mentorship Program

Dear Sir or Madam,

Thank you for the opportunity to provide comments to the proposed new rules governing the Manufacturing Mentorship Program. The Ohio Manufacturers' Association (OMA) has been a strong proponent of such a program and the opportunities it creates to expose young people to manufacturing careers. The OMA represents more than 1,300 members throughout Ohio, and its mission is to protect and grow Ohio manufacturing.

The OMA appreciates the extensive work and research that the Division of Industrial Compliance has performed to prepare these rules for interested party comment. The OMA and its Manufacturing Mentorship Program working group has been in contact with the department throughout the fall and winter, offering feedback to ensure that the rules will satisfy the needs of both manufacturing employers and potential manufacturing employees.

We are pleased to see that the department incorporated the majority of the OMA feedback in its last draft. At this time, we have no further suggestions and are pleased to offer our support to the current draft rules.

Per 4101:9-2-02.1, manufacturers would be required to maintain compliance documents for two years following the employment of the minor or after the minor turns 18, whichever is later. We understand that the department requires this measure in the event an investigation is ever warranted. Since this is a new requirement for manufacturers, we would ask the department to consider creating a simple template form for manufacturers to make the recordkeeping process not only simpler, but also standard from employer to employer. Having the department develop a standardized process and format for recordkeeping will help reduce employer confusion and mistakes and ease any audit process for the department if there is an investigation.

The OMA appreciates the opportunity to comment on the draft rules and to share our thoughts at this stage. We would appreciate the opportunity to remain engaged with the Department of Commerce as an interested party throughout the remaining stages of the rule creation process.

If there are any questions regarding the foregoing, please do not hesitate to contact me at (614) 629-6814 or [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com).

Sincerely,



Rob Brundrett  
Director, Public Policy Services