

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 4101:9-2-25

Date: 8/8/19

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Rescinded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 that are hazardous or detrimental to their health and well-being. Aside from grammatical or other

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stylistic changes, the only substantive changes being proposed by this rules package involve changes that mirror similar federal regulations. See “Attachment B” for a rule-by-rule breakdown.

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

Section 4109.05 of the Ohio Revised Code.

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 section 4109.05 of the Ohio Revised Code, the Director of Commerce, after consulting with the Ohio Department of Health, is required 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 section 4109.05 of the Ohio Revised Code, are modeled after the prohibited occupations that are listed in the federal Fair Labor Standards Act (FLSA), which 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.

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholders were contacted via e-mail on July 22, 2019.

A list of stakeholders may be found in “BIA Attachment A.”

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

At present, the Division has not received any input from stakeholders regarding these proposed 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?

The rules, which are promulgated pursuant to the requirements of section 4109.05 of the Ohio Revised Code, 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, as such, the Industry is familiar with these standards as well as the proposed changes that are also modeled after the FLSA standards.

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 section 4109.05 of the Ohio Revised Code. 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 Department of Health approved these rules on April 1, 2019.

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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 rules package. However, given the limited number of changes—all modeled after the federal FLSA regulations—there will be little to no impact to the 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 section 4109.05 of the Ohio Revised Code, are modeled after the prohibited occupations that are listed in the FLSA, which 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 no stakeholders—including those employers who could be adversely impacted by these rules—have voiced opposition to these proposed rule changes.

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 Chapter 4109. of the Ohio Revised Code and Chapter 4101:9-2 of the Ohio Administrative Code through Industry meetings, roundtable sessions, and other outreach events.

BIA ATTACHMENT A

Wage and Hour Stakeholder List

Ohio Association of Agricultural Educators
Rachel Scior, President
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Ohio Department of Job and Family Services
ocf@jfs.ohio.gov

Child Labor Public Education Project
University of Iowa Labor Center
labor-center@uiowa.edu

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

Ohio Association of Child and Youth Care Professionals
info@helpingohiokids.org

Child Welfare League of America
cwla@cwla.org

Ohio Department of Health
Lance Himes
lance.himes@odh.ohio.gov

Voices for Children
info@raiseyourvoiceforkids.org

Aramark
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Automotive Services Association of Ohio, Inc.
mdougher@asaohio.org

Boys and Girls Club of America
Matt Watrous
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Cincinnati Museum Center
information@cincymuseum.org

BIA ATTACHMENT A

Columbus Zoo and Aquarium
Jennifer Koslow
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Columbus and Franklin County Metro Parks
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Ohio Library Council
Michelle Francis
mfrancis@olc.org

Ohio Grocers Association
Kristin Mullins
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Ohio Parks and Recreation Association
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Cedar Fair Entertainment Company
Laurie Tardif
laurie.tardif@cedarfair.com

**Ohio Department of Commerce, Division of Industrial Compliance
BIA Attachment B**

<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
4101:9-2-01 Applicability of rules.	Minors and individuals employing minors	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.	
4101:9-2-02 Prohibited occupations for minors under sixteen years of age.	Minors and individuals employing minors	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.	
4101:9-2-03 Hazardous occupations in agriculture.	Minors and individuals seeking to employ minors in occupations in agriculture	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.	
4101:9-2-04 Occupations involving slaughtering, meat-packing or processing, or rendering.	Minors and individuals seeking to employ minors in occupations involving slaughtering, meat-packing or processing, or rendering	<p>The proposed amendment updates this rule to mirror that of 29 C.F.R. § 570.61. First, it was clarified that one of the categories of prohibited occupations included work on specific machines <i>or the individual parts or attachments of such machines</i>. Second, work involving processing of poultry was removed from the exceptions of this rule, and poultry scissors or shears was added to the list of prohibited equipment. Third, occupations involving the hand-lifting or hand-carrying of deer and buffalo carcasses were added to the list of prohibited occupations for minors.</p> <p>These changes are all contained in the federal standard, and the amendment seeks to maintain consistency with the federal regulations.</p> <p>The proposed amendment may result in increased labor costs for employers to hire an adult to perform work that a minor would now be prohibited from pursuing.</p>	
4101:9-2-05 Power-driven bakery machine occupations.	Minors and individuals seeking to employ minors in power-driven bakery machine occupations	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.	
4101:9-2-06 Occupations involved in the manufacture of brick, tile, and kindred products.	Minors and individuals seeking to employ minors in occupations involved in the manufacture of brick, tile, and kindred products	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.	

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<p>4101:9-2-07 Occupations involved in the manufacture of chemicals.</p>	<p>Minors and individuals seeking to employ minors in occupations involved in the manufacture of chemicals</p>	<p>Only grammatical changes are proposed (including correction of a citation), and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.</p>
<p>4101:9-2-08 Manufacturing or storage occupations involving explosives.</p>	<p>Minors and individuals seeking to employ minors in manufacturing or storage occupations involving explosives</p>	<p>Only grammatical changes are proposed (including correction of a citation), and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.</p>
<p>4101:9-2-09 Occupations involving exposure to radioactive substances and to ionizing radiations.</p>	<p>Minors and individuals seeking to employ minors in occupations involving exposure to radioactive substances and to ionizing radiations</p>	<p>Only grammatical changes are proposed (including correction of a citation), and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.</p>
<p>4101:9-2-10 Power-driven balers, compactors, and paper-products machine occupations.</p>	<p>Minors and individuals seeking to employ minors in power-driven balers, compactors, and paper-products machine occupations</p>	<p>The proposed amendment updates this rule to mirror that of 29 C.F.R. § 570.63. The current version of the rule only applies to power-driven paper-products machines. The proposed amendment adds balers and compactors that are designed or used to process materials <i>other than paper</i>.</p> <p>The proposed amendment should have minimal, if any, adverse impact.</p>
<p>4101:9-2-11 Power-driven metal forming, punching, and shearing machine operations.</p>	<p>Minors and individuals seeking to employ minors in power-driven metal forming, punching, and shearing machine operations</p>	<p>Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.</p>
<p>4101:9-2-12 Occupations involved in the operation of power-driven circular saws, band saws, and guillotine shears.</p>	<p>Minors and individuals seeking to employ minors in occupations involved in the operation of power-driven circular saws, band saws, and guillotine shears</p>	<p>The proposed amendment updates this rule to mirror that of 29 C.F.R. § 570.65, which included occupations of operator or helper on power-driven fixed or portable machines, including chain saws, reciprocating saws, wood chippers, and abrasive cutting discs (including definitions of these types of machines).</p> <p>These changes are all contained in the federal standard, and the amendment seeks to maintain consistency with the federal regulations. Moreover, given the current equipment presently prohibited for use by minors, the additions of similar equipment, such as a chain saw</p>

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		<p>and the potential hazards associated with their use was appropriate.</p> <p>The proposed amendment may result in increased labor costs for employers to hire an adult to perform work that a minor would now be prohibited from pursuing; but, given the potential hazards of this type of equipment, this change was necessary.</p>
4101:9-2-13 Power-driven woodworking machine occupations.	Minors and individuals seeking to employ minors in power-driven woodworking machine occupations	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.
4101:9-2-14 Coal mine occupations.	Minors and individuals seeking to employ minors in coal mine occupations	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.
4101:9-2-15 Occupations in connection with mining, other than coal.	Minors and individuals seeking to employ minors in occupations in connection with mining, other than coal	<p>The proposed amendment updates this rule to mirror that of 29 C.F.R. § 570.60, which included a prohibition from minors working on track crews in the building and maintaining of sections of railroad track located in open-cut metal mines.</p> <p>These changes are all contained in the federal standard, and the amendment seeks to maintain consistency with the federal regulations.</p> <p>The proposed amendments may result in increased labor costs for employers to hire an adult to perform work that a minor would now be prohibited from pursuing.</p>
4101:9-2-16 Forest fire fighting, forest fire prevention, logging, and sawmilling occupations.	Minors and individuals seeking to employ minors in forest fire fighting, forest fire prevention, logging, and sawmilling occupations	<p>The proposed amendment updates this rule to mirror that of 29 C.F.R. § 570.54, which included a prohibition from minors in forest fire fighting and forest fire prevention occupations.</p> <p>These changes are all contained in the federal standard, and the amendment seeks to maintain consistency with the federal regulations.</p> <p>The proposed amendment may result in increased labor costs for employers to hire an adult to perform work that a minor would now be prohibited from pursuing. But given the current categories of prohibited occupations, including logging and saw milling</p>

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		occupations, the addition of forest fire fighting and forest fire prevention is appropriate.
4101:9-2-17 Motor vehicle occupations.	Minors and individuals seeking to employ minors in motor vehicle occupations	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.
4101:9-2-18 Maritime and longshoreman occupations.	Minors and individuals seeking to employ minors in maritime and longshoreman occupations	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.
4101:9-2-19 Railroad occupations.	Minors and individuals seeking to employ minors in railroad occupations	No changes proposed.
4101:9-2-20 Occupations in excavation operations.	Minors and individuals seeking to employ minors in occupations in excavation operations.	No changes proposed.
4101:9-2-21 Power-driven hoisting apparatus occupations	Minors and individuals seeking to employ minors in power-driven hoisting apparatus occupations	<p>The proposed amendment updates this rule to mirror that of 29 C.F.R. § 570.58. The current version of this rule included only “work of operating” certain power-driven hoisting apparatus. The federal standard included “tending, riding upon, working from, repairing, servicing, or disassembling.”</p> <p>These changes are all contained in the federal standard, and the amendment seeks to maintain consistency with the federal regulations.</p> <p>The proposed amendment may result in increased labor costs for employers to hire an adult to perform work that a minor would now be prohibited from pursuing.</p>
4101:9-2-22 Occupations in roofing operations.	Minors and individuals seeking to employ minors in roofing operations	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.
4101:9-2-23 Occupations involved in wrecking, demolition, and shipbreaking operations	Minors and individuals seeking to employ minors in occupations involved in wrecking, demolition, and shipbreaking operations	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.

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4101:9-2-24 Amendment of rules.	Minors and individuals seeking to employ minors	Only grammatical changes are proposed, and, as such, no adverse impact, as described in section 107.52 of the Revised Code, is expected from this amendment.
4101:9-2-25 Procedure for notice of public hearings.	Minors and individuals seeking to employ minors	No changes proposed.