



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers' Compensation

Rule Contact Name and Contact Information:

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

Specific Safety Requirements (SSR) - Workshops and Factories

Rule Number(s): 4123:1-5-01 through 4123:1-5-29, and 4123:1-5-99

Date of Submission for CSI Review: March 21, 2023

Public Comment Period End Date: April 11, 2023

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 30 rules (FYR? NO)

Rescinded/___ rules (FYR?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 purpose of this chapter 4123:1-5 of the Administrative Code is to provide safety for life, limb, and health of employees. The specific requirements of this code are requirements upon an employer for the protection of such employer's employees and no others and apply to all workshops and factories subject to the Workers' Compensation Act (Sections 4123.01 to 4123.99 of the Revised Code).

The proposed rule changes in this package are to eliminate regulatory restrictions "shall," "must," "require," "shall not," "may not," and "prohibit" from Chapter 4123-18 of the Ohio Administrative Code in accordance with the regulatory restriction reduction mandate found in R.C. 121.95 and R.C. 121.951.

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.**

Authorize: Article II Section 35 Ohio Constitution, 4121.12, 4121.121, 4121.13

Amplify: 4121.12, 4121.121, 4121.47

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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. However, the Bureau safety rules are consistent with Federal OSHA regulations.

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

The Specific Safety Requirements (SSR) are particular to the State of Ohio and governed solely by state law.

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 these rules is workplace safety. An employer's violation of a specific safety rule can lead to an additional award for the injured worker (VSSR award). BWC bills the VSSR award to the employer as a penalty. The Ohio Constitution, Article II, Section 35, emphasizes safety, stating that the workers' compensation board "shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, ... to be expended by such board ... for the investigation and prevention of industrial accidents and diseases." The board also shall "determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employees [sic], enacted by the General Assembly or in the form of an order adopted by such board, ..." A finding of such violation permits the Industrial Commission to increase the injured worker's compensation by "such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law," and "the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award"

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

These rules continue to enforce safety for employees and employer compliance. As such, these rules encourage workplace safety. The Bureau is measuring such success by the number of applications submitted for additional awards due to violations of these rules.

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.**

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

The proposed rules were sent via email for stakeholder feedback on January 31, 2023, with comments due by February 15, 2023. The proposed rules were distributed to various individuals, including Dianne Grote-Adams, Ralph Wise, and Fred Freeman.

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

Stakeholder responses received by BWC are summarized on the Stakeholder Feedback Summary Spreadsheet.

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 Bureau did a side by side cross reference of the Ohio Administrative Code Specific Safety Requirements and the following publications:

- OSHA General Industry Standards – 29 CFR 1910
- OSHA Construction Standards – 29 CFR 1926
- ANSI/ISEA Z87.1-2020: American National Standard For Occupational And Educational Personal Eye And Face Protection Devices.

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

None. OSHA regulations are the exclusive source for workplace safety and health requirements. Other safety and health standards such as American National Standards Institute (ANSI), National Electric Code (NEC), National Fire Protection Agency (NFPA), and other regulations are incorporated into the OSHA regulations by reference as needed. The stakeholders consider the Ohio Administrative Code (OAC) to be consistent with the regulations listed in (11) above, in providing safety for life, limb, and health of employees.

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

Chapter 4123:1-5 of the Administrative Code, Specific Safety Requirements (SSR) are the only rules used in adjudication of additional award claims with respect to general workshops and factories.

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14. 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 rules will be implemented through the Joint Committee on Agency Rules Review (JCARR) process. Enforcement of the rules is through the Ohio Industrial Commission, as assisted by reports from the BWC Safety Violation Investigation Unit.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The specific requirements of this code are requirements upon an employer for the protection of such employer's employees and no others and apply to all workshops and factories subject to the Workers' Compensation Act (Sections 4123.01 to 4123.99 of the Revised Code).

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

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.

If an injured worker suffers an injury as a result of an employer's violation of a safety rule, the Industrial Commission can add from 15% to 50% to the injured worker's compensation, which is billed to the employer as a penalty or fine.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No. The public purpose for these rules is workplace safety.

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

To comply with safety measures for Ohio workers, BWC is mandated under Ohio State Law to develop safety regulations for Ohio employers.

Regulatory Flexibility

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

Not Applicable.

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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?

Not applicable under OAC 4123-3-20 Additional Awards by reason of Violations of Specific Safety Requirements (VSSR). There are no waiver provisions because these rules protect the safety of employees.

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

BWC's Division of Safety & Hygiene (DSH) provides the following resources to obtain compliance, at no direct cost to the employer.

- Additional resources include our [Ohio Safety Congress & Expo](#), the largest regional safety and health exhibition in the United States and the [Ohio safety councils](#), which provide a forum for occupational safety and health information in local communities.
- Financial resources are available through the [SafetyGRANTS\\$ program](#), which provides matching safety intervention grants to eligible employers for the purchase of equipment that may substantially reduce or eliminate workplace injuries and illnesses.
- The [OSHA On-Site Consultation Program](#) provides consultation services to small employers in high-hazard industries.
- Employer management services blend traditional risk and safety management approaches to controlling workers' compensation costs. Employer management services are dedicated to working with employers to prevent workplace injury and illness claims and to control claims costs if they do occur.
- The employers' workers' compensation premium includes the cost of our services. As a result, employers invest their safety dollars in prevention.

The Ohio legislature established DSH as a consultative service to inform, educate and assist employers in loss-prevention activities.



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2023 Stakeholder Feedback Recommendations for Changes to Chapter 4123:1-5 Workshops and Factories

Comment #	Rule #/Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
1	4123:1-5-02(D)(1)(b)	Ralph Wise	. (b) When the guarding prescribed above would result in an impairment of the work being performed and is not feasible, alternative protection may be provided for employees as long as the alternative protection has a safety equivalent equal to or greater than the guarding specified in paragraph (D)(1)(a) of this rule.	the wording as proposed may not be in sync with how the OAC is supposed to be stated.	The stakeholder suggestion is not materially different from the BWC proposed changes.	Keep current language.
2	4123:1-5-02(D)(1)(b)	Dianne Grote-Adams	Such alternative protection shall will provide safety	In keeping with similar changes, replace “shall” with “will”	The current language maintains consistency with OSHA.	Keep current language.
3	4123:1-5-03(C)(6)(h)(ii)	Dianne Grote-Adams	The distance between rungs, cleats, and steps shall not be spaced not less than at least ten inches and not more than fourteen inches	Dianne likes the wording of “at least ten inches” rather than “not less than ten inches”.	Although Dianne’s comment is appreciated, the “not less than” language is consistent with the rest of the OAC and with OSHA.	Keep current language