



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information:

Aaron Johnston- Division Counsel; (614) 644-3297

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

Elevator Inspection

Rule Number(s): 1301:3-6-01; 1301:3-6-05.

Date of Submission for CSI Review: 12/17/21

Public Comment Period End Date: 12/31/21

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 2 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Rescinded/___ rules (FYR?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):

- 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.

Division 1301:3-6 of the Ohio Administrative Code establishes the process by which elevator inspectors may obtain a certificate of competency and a commission as a general or special inspector of elevators, including how disciplinary proceedings may be conducted against such individuals. The regulations also establish how elevator owners and operators may obtain permits for the erection, repair, or removal to a different location of an elevator; certificates of operation; and temporary certificates of operation. In addition, the standard by which elevator inspections are to be conducted is also set forth in this regulation.

The proposed amendments to rules 1301:3-6-01 and 1301:3-6-05 of the Ohio Administrative Code deal with clarifying what prior criminal offense convictions may disqualify an applicant from obtaining a certificate of competency to inspect elevators. The amendments are proposed to ensure these rules comply with the new legislation recently passed in H.B. 263 passed by the 133rd General Assembly.

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- 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 4105.12 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, nor 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.

- 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 public purpose for this regulation is to promote the health, safety, and wellbeing of Ohio citizens by ensuring that elevators, escalators, and moving walks throughout the state are operated in a safe manner that complies with applicable safety codes. This purpose is accomplished by ensuring that when elevators receive their regularly scheduled inspections, as well as acceptance and alteration inspections, that the individual performing the inspection is adequately trained and understands how such an inspection should be performed. These specific rules outline the process by which individuals may file complaints against certificate of competency holders as well as the process by which disciplinary action may be taken against such holders and applicants for certificates of competency as well.

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

The Division will measure the success of these regulations by obtaining feedback from applicants and certificate of competency holders as to the clarity of these rules as well monitoring instances when disciplinary action is taken against certificate holders and applicants.

- 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.

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No, none of the proposed rules contained in this rule package are being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931.

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.

See attached spreadsheet.

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

None.

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?

Given the subject matter of these rules, scientific data was not relevant to their development.

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 were considered, but these regulations are proposed because they strike the appropriate balance of promoting safety and efficient administration of elevator regulations while not unduly burdening applicants and certificate of competency holders.

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.*

Because these rules deal with the process of pursuing disciplinary action against applicants and certificate holders, they, in essence, have a performance-based component. By not engaging in conduct that was subject oneself to discipline, certificate holders and applicants may avoid disciplinary action being brought against them.

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

The Division reviewed relevant portions of the Revised Code and the Ohio Administrative Code and found that these regulations do not duplicate existing Ohio regulations. Moreover, section 4105.12 of the Revised Code grants rule-making authority over the inspection of elevators to the superintendent of industrial compliance, and expressly exempts rulemaking authority relating to construction, maintenance, and repair of elevators.

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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 Division expects the implementation of these regulations to occur without issue because nearly all of the proposed amended language was pulled from regulatory language contained in rules promulgated by the Ohio Construction Industry Licensing Board, which have operated with this language for a number of years without issue.

In addition, the Division’s staff will be available to respond to inquiries by members of the regulated industry and also will inform general and special inspectors of elevators about the proposed amendments when annual training is conducted.

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 general and special inspectors of elevators, as well as owners and operators of elevators, escalators, and moving walks throughout the state.

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

The nature of the adverse impact includes potential disciplinary action being taken against a certificate holder or applicant should they violate the provisions of these rules.

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.

Because this rule deals with adherence to disciplinary requirements for certificate of competency holders and applicants, the expected adverse impact cannot be quantified.

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

Because of the potential hazard that an elevator, escalator, or moving walk can pose to the general public, it is vitally important to ensure that such conveyances are properly maintained and operating safely, in compliance with applicable safety standards. Accordingly, the Revised Code requires all such conveyances to be inspected on an, at least, annual basis and that such inspection be performed by an individual holding a certificate of competency from the Division. The adverse impact associated with meeting the training and education

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requirements, including continuing education obligations—as well as maintaining compliance with the rules’ disciplinary prohibitions—ensures that such individuals are competent to perform inspections of elevators, escalators, and moving walks. Moreover, the adverse impact borne by elevator owners and operators in having these inspections performed was imposed in the Revised Code, not by these rules.

Regulatory Flexibility

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

An exemption for small businesses does not appear permitted by the Revised Code. Moreover, given the fact that these rules, including proposed amendments, deal with the process of pursuing disciplinary action against certificate of competency holders and applicants, an exemption from such rules for small businesses should be greatly discouraged.

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 Division often excuses first-time paperwork violations and attempts to obtain compliance with applicable safety codes, as well as the Revised Code and the Ohio Administrative Code, through nondisciplinary means.

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

The Elevator Section is available to answer questions and address concerns posed by small businesses as well as the public generally. In addition, the Elevator Section often performs additional inspections, outside of the typical regularly scheduled inspection timeframe, to address specific concerns regarding elevators, escalators, and moving walks throughout the state.

Ex. A

Elevator Stakeholders

National Elevator Industry Incorporated
1677 County Route 64 P.O. Box 838
Salem, New York 12865-0838
518-854-3100 Fax. 518-854-3257
info@neii.org
www.neii.org

National Association of Elevator Safety Authorities
6957 Littlerock Road SW Suite A
Tumwater, WA 98512
360-292-4968
FAX: 360-292-4973
jim@naesai.org
www.naesai.org

National Association on Elevator Contractors
1298 Wellbrook Circle
Conyers, GA 30012
770-760-9660 FAX: 770-760-9714
info@naec.org
www.naec.org

International Union of Elevator Constructors
7154 Columbia Gateway Dr.
Columbia, MD 21046
410-953-6150
contact@iuec.org
www.iuec.org

Amy M. Cole
Stateside
703-525-7466, ext. 201
amc@stateside.com