



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Department of Commerce, Board of Building Appeals

Rule Contact Name and Contact Information:

Aaron Johnston, aaron.johnston@com.state.oh.us

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

4101:13-1/Board of Building Appeals Rules

Rule Number(s): 4101:13-1-01 (No Change); 4101:13-1-02 (No Change); 4101:13-1-03

(Amended); 4101:13-1-04 (Amended); 4101:13-1-05 (No Change); 4101:13-1-08

(Amended); 4101:13-1-10 (Amended); 4101:13-1-11 (No Change); 4101:13-1-12

(Amended); 4101:13-1-13 (Amended)

Date of Submission for CSI Review: September 16, 2020

Public Comment Period End Date: September 30, 2020

Rule Type/Number of Rules:

New/ __ rule

No Change/ 4 rules (FYR? 4)

Amended/ 6 rules (FYR? 6)

Rescinded/ ____ rules (FYR?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

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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.

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 Ohio Board of Building Appeals was established under section 3781.19 of the Revised Code to conduct the adjudication hearings for appeals from: 1) adjudication orders issued by the Ohio Department of Commerce, Division of Industrial Compliance or any certified local building department; and 2) citations issued by the State Fire Marshal, an assistant fire marshal, or a certified fire safety inspector. Pursuant to section 3781.19 of the Revised Code, the rules set forth in Chapter 4101:13-1 of the Ohio Administrative Code establish the procedural requirements for how it conducts its adjudication hearings.

A list with a description of the individual rules and the proposed changes is attached as “BIA Attachment A.”

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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.**

R.C. 3781.19

- 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. No.

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

Not applicable.

- 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)?**

Pursuant to section 3781.19 of the Revised Code, the public purpose of these rules is to provide a consistent, fair, and efficient process to the parties who are participating in an appeals case before the Board. The purpose of rule 4101:13-1-13 of the Administrative Code is to establish reasonable fees for the filing and processing appeals, which reflect the actual costs of administering the appeals cases and conducting hearings.

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

The rules are successful when they provide to impacted parties both: 1) a consistent, fair, and efficient process for having their cases heard by the Board; and 2) clear guidelines on how they can participate in that process. The success of the rules will be measured by eliciting feedback from the public, stakeholders, and any interested parties regarding the clarity and impact of the regulations.

- 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.

Stakeholders were contacted via e-mail on August 18, 2020.

Please see the “BIA Attachment B.”

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

Stakeholders were notified of the proposed rule package and provided with an opportunity to give input. The Ohio Department of Commerce received one set of comments from a stakeholder, and a copy of the comments and the Department’s response are attached as “BIA Attachment C.”

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?

No scientific data was used to develop the rules, as the rules govern only the procedure of appeals.

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 not considered in proposing these rules or their amendments, as no alternative regulations were proposed by the stakeholders. Additionally, most, if not all, of the current regulations have been relatively unchanged in substance for multiple years or even decades, and they have been successful as measured by the standards set forth above in the answer to question 7.

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.*

No, performance-based regulations were not considered in proposing these rules as these rules govern the procedural requirements for the Board’s cases, and performance-based regulations would not be workable or reasonable in this context.

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

Section 3781.19 of the Revised Code established and authorizes the Board of Building Appeals to hear appeals of certain adjudication orders and fire citations. No other entity or agency is permitted to adopt rules regarding the administrative processes of the Board, and

the Department has conducted a thorough review of the Revised Code and Administrative Code to ensure there is no duplication.

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 Ohio Department of Commerce and Board of Building Appeals have and will notify the stakeholders about this rule package and will be available by telephone, mail, and e-mail to answer any questions from stakeholders and the public. The proposed changes are almost entirely non-substantive and are expected to have little to no impact on the regulated community.

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

Please see the attached “BIA Attachment D.”

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

The administrative fee of \$200.00 to file an appeal is based on the actual costs to the Board/Department to administer and process the appeals. The time that may be incurred to comply with these rules is necessary to ensure the aggrieved parties have the opportunity for a fair and efficient hearing on their appeal.

Regulatory Flexibility

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

No. The regulations govern the procedural requirements for the filing and hearing of appeals before the Board of Building Appeals, and alternative requirements for small businesses would not be appropriate or reasonable in these circumstances.

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?

No fines or penalties are assessed to parties to an appeal before the Board of Building Standards, so, section 119.14 of the Revised Code would not be applicable. That being said, the Board notifies a party of any paperwork issues that may arise and, as appropriate, will assist a party in providing the information or paperwork necessary.

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

The Board of Building Appeals is easily accessible by e-mail, mail, and telephone for questions or requests for assistance, and the Ohio Department of Commerce, Division of Industrial Compliance's website also provides resources and contact information for inquiring parties. Both the Ohio Department of Commerce and the Board strive to provide great customer service, and helping regulated parties achieve compliance has been and remains a priority.

BBA RULES

BIA ATTACHMENT A

4101:13-1-01, Official address of the board of building appeals (No Change) – This rule establishes the official address of the Board of Building Appeals. No changes are proposed for this rule.

4101:13-1-02, Quorum (No Change) – This rule establishes what constitutes a quorum of the Board to transact business and explains the effect of a vacancy of a Board member. No changes are proposed for this rule.

4101:13-1-03, Filings of documents (Amend) – This rule establishes the requirement that appeals documents be filed with the Board. The proposed amendment removes unnecessary language and changes the requirement that documents shall be filed at the office of the Board to a requirement that documents be filed with the office of the Board.

4101:13-1-04, Appeals from orders enforcing the Ohio building code, the Ohio elevator code, the Ohio boiler pressure and vessel code, and the Ohio fire code (Amend) – This rule sets forth the timing, manner, and content requirements for notices of appeal. The proposed amendment to this rule corrects the title to have the plural form of “Appeals,” instead of the singular form; corrects a reference to the “notice of appeal;” makes punctuation changes; and rewords and reorganizes the list of requirements for a notice of appeal for ease of reading and clarity.

4101:13-1-05, Motions, applications, and requests (No Change) – This rule sets forth the written requirement for motions, applications, or requests submitted with the Board and when a memorandum must accompany a motion, application, or request. No changes are proposed for this rule.

4101:13-1-08, Continuances (Amend) – This rule establishes when continuances or adjournments of Board hearings may be ordered or granted and how motions for either should be handled. The proposed amendment to this rule removes an unnecessary comma and makes no other changes.

4101:13-1-10, Stipulations (Amend) – This rule sets forth how parties may make stipulations of fact in their proceedings and establishes the ability of the Board to require development of any fact it deems necessary to properly determine a case. The proposed amendment to this rule makes no substantive changes to the rule and only reorganizes the rule’s current language for better clarity.

4101:13-1-11, Exhibits (No Change) – This rule establishes the right of parties to present exhibits at their hearings. No changes are proposed for this rule.

4101:13-1-12, Procedure for notice of public meetings (Amend) – This rule sets forth the notice requirements for the Board’s public meetings. The proposed amendment to this rule makes a grammatical correction. The proposed amendment to this rule also removes a provision allowing any person to determine the purpose or agenda of a regularly scheduled Board meeting by writing to the Board executive secretary.

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4101:13-1-13, Fees for filing and processing of appeals (Amend) – This rule establishes the administrative fee for the filing and processing of appeals by the Board and the Board’s ability to waive the fee and order a refund. The proposed amendment to this rule makes no substantive changes and only inserts two commas.

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BIA Attachment B – BBA Stakeholder List

American Institute of Architects of Ohio
17 S. High Street, Ste. 200
Columbus, OH 43215
aiaohio@assnoffices.com

Ohio Society of Professional Engineers
400 S. Fifth Street, Ste. 300
Columbus, OH 43215
ospe@ohioengineer.com

State Fire Marshal
8895 E. Main Street
Reynoldsburg, OH 43068
websfm@com.state.oh.us

Board of Building Standards
Regina Hanshaw, Executive Secretary
6606 Tussing Road
Reynoldsburg, OH 43068
regina.hanshaw@com.state.oh.us

BIA Attachment C *****DRAFT - NOT FOR FILING*****

4101:13-1-04 Appeals from orders enforcing the Ohio building code, the Ohio elevator code, the Ohio boiler pressure and vessel code, and the Ohio fire code.

Every notice of appeal must be filed by the aggrieved party within thirty days of the mailing date of the adjudication order or thirty days from the receiving date of a citation issued pursuant to section 3737.41 or 3737.42 of the Revised Code. The notice of appeals must ~~set forth~~be in a legible ~~manner~~and include the following information:

- (A) The name and address of the applicant or appellant;
- (B) The name of the officer or body issuing the adjudication order or citation that is being appealed;
- (C) ~~A and also include a~~ copy of the adjudication order or citation that is being appealed; ~~and~~;
- (D) The reason for the appeal, the relief sought, and any supporting documents or other pertinent information; ~~and the relief sought~~.

Summary of Comments on OAC_4101\$13-1-04_(Amended) - Welker Review (1).pdf

Page: 1

 Number: 1 Author: welketl Subject: Highlight Date: 8/20/2020 1:38:48 PM

This assumes the applicant or appellant is acting as the agent of the owner, whether its a design professional, contractor or sub-contractor or other agent. This section should include the name and legal address of the property owner. Consider the possibility that the owner of the property does not agree with appellant and their proposed relief being sought. In this case the owner has rights that should be preserved.

 Number: 2 Author: welketl Subject: Highlight Date: 8/20/2020 1:48:04 PM

Including a copy the application for approval, certificate of approval (the permit) if issued, and a copy of the plans as submitted or the approved plans. Having complete information on the front end of an appeal could reduce the need for continuances.

Response to Stakeholder Comments

Proposed rule 4101:13-1-04(A):

- Terry Welker, member of AIA (American Institute of Architects) Ohio, stated that this paragraph should “include the name and legal address of the property owner” to preserve the rights of the property owner in cases where the property owner “does not agree with appellant and their proposed relief being sought.”

Department Comment: The interests of a property owner in an appeals case is already protected in the manner that the commenter is describing. The Board of Building Appeals’ form to request an appeal hearing requires the applicant to include the property owner’s name and address, and in all of the Board’s cases, the Board of Building Appeals always provides notice to the property owner of the appeal hearing.

Proposed rule 4101:13-1-04(D):

- Terry Welker, member of AIA (American Institute of Architects) Ohio, suggested that proposed paragraph (D) of rule 4101:13-1-04 of the Administrative Code should add language that a notice of appeal must also include a “copy of the application for approval, the certificate of approval (the permit) if issued, and a copy of the plans as submitted or the approved plans. Having complete information on the front end of an appeal could reduce the need continuances.”

Department Comment: The Board of Building Appeals hears appeals of both adjudication orders and fire citations. In certain cases, such as appeals of fire citations, there will be no underlying application for approval or plans that have been submitted, so, as the rule applies to appeals of all types of cases that the Board hears, it cannot require any specific type of documentation that may not be applicable in all cases. This is why the rule currently requires “any supporting documents or other pertinent information.” The Board does state in its notice of hearing to all parties that insufficient documentation may result in a continuance of a hearing and a delay in the case, but for the purposes of the initial notice of appeal, the rule requires submission of the only document that will be present in all cases: the order or citation being appealed. Examples of relevant paperwork for certain types of appeals would be more appropriately provided in additional guidance or other forms/notices provided by the Board.

**Ohio Dept. of Commerce, BBA Rules
BIA Attachment D**

<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
4101:13-1-01 Official address of the board of building appeals.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule, and no changes are being proposed for this rule.	
4101:13-1-02 Quorum.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule, and no changes are being proposed for this rule.	
4101:13-1-03 Filings of documents.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule or the proposed changes.	
4101:13-1-04 Appeals from orders enforcing the Ohio building code, the Ohio elevator code, the Ohio boiler pressure and vessel code, and the Ohio fire code.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	The existing rule requires any aggrieved party wishing to appeal an order or citation to the Board of Building Appeals to pay a \$200.00 administrative fee and submit a notice of appeal to the Board, which may require a nominal amount of time to prepare. Nothing in the proposed rule changes is expected to change the adverse impact of the existing rule in any way.	
4101:13-1-05 Motions, applications, and requests.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	The existing rule requires a memorandum be submitted anytime a motion, application, or request is filed with the Board that draws into question any fact not apparent from the original papers, transcript, or record. This would require the filing party to incur some time in preparing the memorandum, but the amount of time incurred will depend	

**Ohio Dept. of Commerce, BBA Rules
BIA Attachment D**

		<p>entirely on the specific facts of the motion, application, or request.</p> <p>No changes are proposed to be made to this rule.</p>
4101:13-1-08 Continuances.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule or the proposed changes.
4101:13-1-10 Stipulations.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule or the proposed changes.
4101:13-1-11 Exhibits.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule, and no changes are being proposed for this rule.
4101:13-1-12 Procedure for notice of public meetings.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	No adverse impact, as described in section 107.52 of the Revised Code, is expected from this rule or the proposed changes.
4101:13-1-13 Fees for filing and processing of appeals.	Aggrieved parties who seek to appeal an adjudication order or fire citation issued by a state or local building or fire department	<p>The existing rule requires any aggrieved party wishing to appeal an order or citation to the Board of Building Appeals to pay a \$200.00 administrative fee.</p> <p>Nothing in the proposed rule changes is expected to change the adverse impact of the existing rule in any way.</p>