

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Building Standards

Regulation/Package Title: Residential Code of Ohio Amendments

Rule Number(s): 4101:8-1-01, 4101:8-5-01, 4101:8-6-01, 4101:8-44-01

Date: June 14, 2017

Rule Type:

New

Amended

5-Year Review

Rescinded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.

The Ohio Board of Building Standards (Board) proposes to amend Ohio Administrative Code (OAC) Rules as follows:

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4101:8-1-01: Clarifies applicability of electrical code to bodies of water as defined in the National Electrical Code; expands exemption for manufactured homes regulated by the Ohio Manufactured Homes Commission to include alterations, additions and utility connections and adds exemptions for other non-occupied structures; clarifies that when an owner may use prescriptive requirements of the RCO as alternative compliance option for commercial building, the building remains within the scope of the OBC; clarifies that an owner may install battery operated smoke and carbon monoxide alarms without obtaining approval when no other construction is taking place; clarifies applicability of electrical code to bodies of water as defined in the National Electrical Code; permits replacement of one plumbing fixture to be exempt from approval; incorporates enforcement options for park districts from RC 3781.10(E)(9); requires the residential building official to identify special conditions that may affect timing of inspections and work the building owner to establish mutually agreed upon inspection times; adds option for issuance of certificate of completion instead of certificate of occupancy for alterations and repairs; permits residential building officials to accept evaluation service (ES) reports for alternative compliance, and makes general editorial changes and clarifications

4101:8-5-01: Adds provisions in response to Petition #16-11 for safety of beam-to-foundation and beam-to-column connections

4101:8-6-01: Adds provisions in response to Petition #16-11 for safety of beam-to-foundation and beam-to-column connections

4101:8-44-01: Updates reference to the Ohio Plumbing Code to include amendments adopted through October 2016.

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

Revised Code § 3781.10: <http://codes.ohio.gov/orc/3781.10>

Revised Code § 4740.14: <http://codes.ohio.gov/orc/4740.14v1>

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.

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

Not applicable.

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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)?

Revised Code § 3781.10 directs the Board to “formulate and adopt rules governing the erection, construction, repair, alteration and maintenance of all buildings specified in section 3781.06 of the Revised Code...” Additionally, Revised Code 3781.06 provides:

Any building that may be used as a place of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy by the public, any residential building, and all other buildings or parts and appurtenances of those buildings erected within this state, shall be so constructed, erected, equipped, and maintained that they shall be safe and sanitary for their intended use and occupancy.

This statute defines safe and sanitary as follows:

“Safe,” with respect to a building, means it is free from danger or hazard to the life, safety, health, or welfare of persons occupying or frequenting it, or of the public and from danger of settlement, movement, disintegration, or collapse, whether such danger arises from the methods or materials of its construction or from equipment installed therein, for the purpose of lighting, heating, the transmission or utilization of electric current, or from its location or otherwise.

“Sanitary,” with respect to a building, means it is free from danger or hazard to the health of persons occupying or frequenting it or to that of the public, if such danger arises from the method or materials of its construction or from any equipment installed therein, for the purpose of lighting, heating, ventilating, or plumbing.

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

The enforcement of these rules will be implemented by certified township, city, and county building departments. Rule 4101:8-1-01 lays out the administrative procedures certified building departments must follow to implement the substantive requirements of these rules to determine compliance. These provisions require a builder or owner to make application to a building department to obtain an approval to build (permit). As part of this application the owner must submit sufficient information and/or construction documents for the building official/plans examiner to determine whether the proposed work complies with the code. After the builder or owner obtains the approval (permit), construction may commence and the building department inspectors will inspect the construction to ensure that the work

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conforms to the original approval. Rule 4101:8-1-01 § 105.2 provides that in the absence of fraud or a serious safety or sanitation hazard, any non-residential structure built in accordance with approved plans shall be conclusively presumed to comply with these rules. The Board requires that certified nonresidential building departments submit an annual yearly operational report which lists the following information: current employees and their certifications, total number of permits issued during the year for each type of occupancy, total number of inspections made, the total value of construction, and the total number of appeals of the code requested by a builder or owner during the year.

Development of the Regulation

7. 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 Board maintains a stakeholder distribution including building department personnel, contractors, designers and professional associations. The stakeholder list is available upon request. On February 7, 2017, the Board sent an email to all agency stakeholders informing them of a scheduled stakeholder meeting on February 24, 2017 to hear comments and respond to questions on these rules. The notice summarized the proposed amendments and also informed stakeholders that if they could not attend the stakeholder meeting, they could submit questions or comments via email or regular mail by March 1, 2017. On February 24, 2017, the Board conducted a stakeholder meeting on the proposed rules at 11:00 AM and the following individuals attended: Amit Ghosh, City of Columbus, Pete Baldauf, City of Vandalia, Don Phillips, COCOA, Charles Huber, OBOA, Medina County Building Department, Kris Klaus, OHBA, Paul Buehrer, City of Oregon, Michael Spry, City of Cincinnati, Bill Spurgeon, OSFM, Ronnie Branson, OAPI, and Scott Young, NIC

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

Charles Huber stated that the reference to article 680 in Section 101.2 noted as new language is currently in the code. Staff responded that he was correct and it was inadvertently noted as new language as it was companion to another new reference to article 680 later in the rule in section 102.10.

Carl Lamping stated he was opposed to the proposed exemption for manufactured homes and that additions should remain within the scope of the code. He stated that Clermont County ensures that additions are structurally independent from the manufactured home and that they can comply with the RCO.

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Amit Ghosh stated that he was ok with the proposed language removing manufactured homes from the scope of the code.

Charles Huber stated that the new language for metro parks in section 102.11 was in response to changes in Ohio law and petition submitted by OBOA dated September 23, 2015. Mr. Huber asked whether the Board was going to issue a memo regarding the impact on plumbing code enforcement by health districts as requested by the OBOA's September 23, 2015 correspondence. Staff responded that a memo was unlikely as the Board does not have oversight of plumbing code enforcement by health districts.

Additionally, the Board received Petition # 16-11 from Michael Chilelli, M.C. Steel requesting amendments to RCO Section 502.9 to provide additional safety for contractors working under structural steel I-Beams and prevent accidents. At its meeting on May 26, 2017, the Board approved Petition #16-11 to add requirements for safety of beam-to-foundation and beam-to-column connections as modified by the Code Committee and the petitioner.

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?

Continuing law based on the 2009 IRC promulgated and amended by the International Code Council (ICC). The model codes developed by ICC are updated every three years through a process that incorporates petitioning, public hearings and voting by ICC members. The ICC Committee that oversaw the development of the 2009 IRC included representatives from the insurance industry, code enforcement, the National Association of Home Builders, the American Architectural Manufacturers Association, architecture, and the National Council of Structural Engineers Association.

When a petition to amend the model code is submitted, the proponent of the change must submit the proposed language of the amendment, the reason for the amendment including scientific data when applicable, and the cost impact of the amendment. All submitted petitions are then published prior to initial code development hearings on the petitions. Interested persons may review the proposed changes and attend the code development hearing and provide comments. A report then is published on the public hearings for review and then final action is taken on the proposed changes at final action hearings. All successful changes are incorporated into the next edition of the model code.

All the amendments included in this package have been developed and/or reviewed and approved by the Residential Construction Advisory Committee. The membership of the RCAC includes: one architect, one fire service representative, one mayor (vacant), two building official representatives, one remodeler, and three general residential contractors. These

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decisions were based on RCAC Members' knowledge and experience in residential construction in Ohio.

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 proposed amendments included in this package are primarily to coordinate the administrative chapter of the RCO with recent changes to administrative chapter of the Ohio Building Code effective November 1, 2017. Additional changes include amendments in response to a petition received to improve safety on residential job sites, as well as coordination of the plumbing provisions applicable to 1-, 2- & 3- family dwellings the current Ohio Plumbing Code effective October 10, 2016. To not make these would create conflicts between the administration and plumbing requirements of the commercial building code and the residential code.

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.

Construction standards for 1-, 2- & 3- Family dwellings are traditionally based on empirical design which is prescriptive and the industry preference. Performance-based construction standards commonly require registered design professional knowledge and expertise. The RCO does not require drawings/construction documents to be prepared by a registered design professional, therefore the provisions must not require specialized knowledge so a homeowner can know how to comply with the code when doing an alternation. However, the RCO does permit a registered design professional's alternative engineered design as a compliance alternative method to the prescriptive requirements.

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

Editorial changes are routinely made to the rules to provide consistency with the Ohio Revised Code and other Board and agencies' rules. Additionally, RC § 3781.10 gives the Board sole authority to adopt rules which regulate the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified RC 3781.06 including residential and non-residential buildings.

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.

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For these rules to be enforced by a local government, its building department must be certified by the Board. The Board also certifies the personnel who work within these departments to ensure only qualified personnel are enforcing the Board's rules. Certified personnel must complete continuing education to maintain their certifications and continue to be authorized to enforce these rules. The Board has authority to suspend or revoke certifications for failure to properly enforce the rules. Also, the Board has a staff member dedicated to responding to complaints by persons affected by the Board rules. This program helps promote consistent and predictable application of the Board rules.

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;

Homebuilders, contractors & homeowners

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

Safety of beam-to-foundation and beam-to-column connections – Increased cost of labor

Incorporate recent OPC updates effective October 10, 2016 into RCO - Difficulty performing water tests under certain circumstances (e.g. during winter or when no water is available yet on site)

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.

Safety of beam-to-foundation and beam-to-column connections – Estimated additional 2 hours increased cost of labor

Incorporate recent OPC updates effective October 10, 2016 into RCO - Water testing take approximately 3 times as much time to perform than air testing. Also, if water needs to be brought to the site, the cost of shipping is approximately \$300 per truck load. However, adopted changes to the OPC attempted to address this cost impact by recognizing additional testing methods for rough-in and final tests of plastic piping.

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

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The RCAC approved these changes and recommended to the Board their adoption. The residential construction industry is represented on the RCAC, the Board, and participates as stakeholders in the rule development process. Any increased cost as a result of these changes is acceptable for the level of increased safety and uniformity achieved.

Regulatory Flexibility

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

The rules do not have special exemptions or alternative means of compliance specifically for small business. The RCO requires a building official to issue an adjudication order to an owner when the design or construction of a building does not comply with the RCO. The adjudication order must comply with Revised Code Chapter 119 and give the owner an opportunity to appeal. This mechanism is often utilized by an owner voluntarily to obtain a variance from the requirements. Variance requests are heard by either the Ohio Board of Building Appeals or a certified local board of building appeals.

Also, the RCO permits alternative engineered designs prepared by a registered design professional to not strictly comply with the prescriptive requirements of the rules. To obtain approvals based on alternative engineered designs, the design professional must submit sufficient technical information to demonstrate that the performance meets the intent of the rules.

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?

Revised Code § 3781.102 does not authorize the Board to set the fees and/or penalties assessed by local certified residential building departments in connection with the enforcement of these rules. Compliance with the rules is accomplished through construction conforming to the certificate of plan approval (permit). Therefore, there are no potential paperwork violations of these rules.

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

The Board's technical staff spends approximately 25% of their time responding to questions on the building codes and educating design professionals, contractors, the public, and code officials of the intent of the Board's rules assisting all parties in compliance.

Also, it is the intent of the Board's rules that they be liberally construed. Rule 4101:8-1-01 states:

The rules of the board and proceedings shall be liberally construed in order to promote its purpose. When the building official finds that the proposed design is a reasonable interpretation of the provisions of this code, it shall be approved. Materials, equipment and devices approved by the building official pursuant to section 114 shall be constructed and installed in accordance with such approval.