

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Board of Building Standards

Regulation/Package Title: Ohio Building Code Chapter 3 - 2014 NEC Clarification for R-3 Occupancy

Rule Number(s): 4101:1-3-01

Date: June 25, 2014

**Rule Type:**

☐ New ☐ 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☒ Amended ☐ Rescinded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.*

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

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4101:1-3-01 to clarify the appropriate NFPA 70 (National Electrical Code) edition to be used for R-3 occupancies upon adoption of rules included in separate rule package updating the NFPA 70 standard to the 2014 edition in the Ohio Building, Plumbing, and Mechanical Codes.

**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 § 3781.11: <http://codes.ohio.gov/orc/3781.11>

**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.

**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*

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*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.*

The Ohio Building Code sets forth the construction standards for nonresidential buildings in the State of Ohio to ensure that they are safe and sanitary. Additionally, Revised Code § 3781.01 provides that local governments may not adopt regulations that conflict with the Board’s rules to facilitate the uniform application of the standards.

Revised Code 3781.11 lists conditions that rules of the Board must address, including:

- (1) For nonresidential buildings, provide uniform minimum standards and requirements, and for residential buildings, provide standards and requirements that are uniform throughout the state, for construction and construction materials, including construction of industrialized units, to make residential and nonresidential buildings safe and sanitary as defined in section 3781.06 of the Revised Code;
- (2) Formulate such standards and requirements, so far as may be practicable, in terms of performance objectives, so as to make adequate performance for the use intended the test of acceptability;
- (3) Permit, to the fullest extent feasible, the use of materials and technical methods, devices, and improvements, including the use of industrialized units which tend to reduce the cost of construction and erection without affecting minimum requirements for the health, safety, and security of the occupants or users of buildings or industrialized units and without preferential treatment of types or classes of materials or products or methods of construction;
- (4) Encourage, so far as may be practicable, the standardization of construction practices, methods, equipment, material, and techniques, including methods employed to produce industrialized units;

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

The enforcement of this rule will be implemented by certified township, city, and county building departments. Rule 4101:1-1-01 lays out the administrative procedures certified

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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 conforms with the original approval. Rule 4101:1-1-01 § 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.***

This rule was previously reviewed by the Common Sense Initiative (CSI) Office. On January 9, 2014, the CSI Office issued a memorandum making no recommendation on this rule and concluded that the Board should proceed with formal rule filing with the Joint Committee on Agency Rule Review (JCARR).

The separate rule package 2014 National Electrical Code (OAC 4101:1-35-01, 4101:2-15-01, 4101:3-13-01) has been reviewed by the CSI Office. On June 12, 2014, the CSI Office issued a memorandum making no recommendations regarding the rule package and concluded that the Board should proceed with formal rule filing with the Joint Committee on Agency Rule Review (JCARR).

During E-Notification and stakeholder review of separate rule package 2014 National Electrical Code (OAC 4101:1-35-01, 4101:2-15-01, 4101:3-13-01), the Board received a comment from City of Mason Building Official Greg Nicholls. Mr. Nicholls comment is attached as Exhibit A. Mr. Nicholls asked that upon adoption of the rules updating the National Electrical Code to the 2014 edition for non-residential buildings, which NEC edition

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would apply for residential projects in the scope of the Ohio Building Code that elect to use the Residential Code of Ohio which would still reference the 2011 edition of the NEC? Mr. Nicholls further suggested clarifying OBC Chapter 3 to address this issue.

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

See response to Question 7. At its meeting on June 20, 2014, the Board's Code Committee reviewed Mr. Nicholls comment and agreed clarification in OBC Chapter 3 is needed.

**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?**

Not applicable. Proposed language provides needed clarification of the application of the National Electrical Code for certain building occupancies and is intended to accompany the 2014 National Electrical Code (OAC 4101:1-35-01, 4101:2-15-01, 4101:3-13-01) rule package.

**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?**

Not applicable. Proposed language provides needed clarification of the application of the National Electrical Code for certain building occupancies and is intended to accompany the 2014 National Electrical Code (OAC 4101:1-35-01, 4101:2-15-01, 4101:3-13-01) rule package.

**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.***

Continuing law permits a registered design professional's alternative engineered design to be a compliance alternative method to the prescriptive requirements of the code. Section 106.5 of the Ohio Building Code permits a registered design professional to submit sufficient technical data to substantiate that performance of the proposed alternative engineered design meets the intent of the code. Additionally, section 107.4.3 provides that when construction documents have been prepared by an Ohio registered design professional conforming to the requirements of the rules of the Board pertaining to design loads, stresses, strength, and stability and other requirements involving technical analysis, the documents need only be examined to the extent necessary to determine conformity with other requirements of the rules of the Board.

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**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. This authority includes the adoption of standards for electrical systems.

**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.**

For the Board's 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;**

No impact. Proposed language provides needed clarification of the application of the National Electrical Code for certain building occupancies and is intended to accompany the 2014 National Electrical Code (OAC 4101:1-35-01, 4101:2-15-01, 4101:3-13-01) rule package.

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

See above.

**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.*

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See above.

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

Not applicable. See above.

**Regulatory Flexibility**

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

The Board's rules do not have special exemptions or alternative means of compliance specifically for small business. The Ohio Building Code (OBC) 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 OBC. 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 OBC 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.

Additionally, NFPA offers complimentary training and code books to code enforcement personnel when a jurisdiction updates to the latest NEC edition to offset the cost to implement a new code. Ohio Chapter International Association of Electrical Inspectors offers training to its members on the current electrical code many of whom are electrical contractors. This proposed language provides needed clarification of the application of the National Electrical Code for certain building occupancies and is intended to accompany the 2014 National Electrical Code (OAC 4101:1-35-01, 4101:2-15-01, 4101:3-13-01) rule package and will be addressed in any training related to electrical code requirements in Ohio.



## Hanshaw, Regina

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**From:** Nicholls, Greg <GNicholls@masonoh.org>  
**Sent:** Monday, May 12, 2014 3:57 PM  
**To:** Hanshaw, Regina  
**Cc:** Regoli, Steve; Adam, Lorenzo  
**Subject:** Proposed Draft rules for the OBC/OMC/OPC

Regina:

I took a look at the proposed changes to update the NEC in the OBC, OMC and OPC, and wanted to prevent the same possible confusion we had back in 2011. The question was what to do with residential projects in the scope of the OBC (4-family or more) that elect to use the RCO option – do they use the 2014 since that is the reference standard for the OBC, or do they use the 2011 since that is the one for the RCO?

This was addressed in a BBS Memo dated October 20, 2011, indicating that the multi-families still used the OBC's reference NEC and Plumbing Code.

Is there way to nip this problem in the bud, by clarifying it in Section 310.1, under R-3's, to add an item 4 to the list of conditions that says the NEC is still the reference electrical standard?

That way we can fix the code and not need the memo.

Thanks

Gregory N. Nicholls, AIA  
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