

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Architects Board

Regulation/Package Title: 2014 Rule Update

Rule Number(s): 4703-1-01, 1-02, 1-03, 1-04, 4703-2-01, 2-02, 2-03, 2-04, 2-05, 2-06, 2-07, 4703-3-01, 3-03, 3-04, 3-05, 3-06, 3-08, 3-09, 3-10, 3-12, 3-13.

Date: August 27, 2014

Rule Type:

☐ Amended

☒ 5-Year Review

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.

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The rules included in this package govern the practice of architecture. The following rules are being proposed as a result of SB 68, HB 488, or Five Year Rule Review:

4703-1-01 **Definitions.** *Five year rule review, no changes.*

4703-1-02 **Applications.** *Five year rule review, no changes.*

4703-1-03 **Certificates.** *Five year rule review, no changes.*

4703-1-04 **Fees.** *Amended to remove emeritus and restoration fees for revoked licenses which were eliminated by SB 68.*

4703-2-01 **Examination.** *Five year rule review. Policy updates due to changes in National Council of Architectural Registration Boards policy.*

4703-2-02 **Examination admission requirements.** *Five year rule review, no changes.*

4703-2-03 **Educational requirements and credits.** *Five year rule review, Policy updates due to changes in National Council of Architectural Registration Boards policy.*

4703-2-04 **Training requirements.** *Five year rule review, no changes.*

4703-2-05 **Reciprocity.** *Five year rule review, no changes.*

4703-2-06 **Program providing for reimbursement of IDP enrollment fees.** *Five year rule review, Clarification of application procedures.*

4703-2-07 **Continuing education.** *Amended to include HB 488 updates to exemptions for military personnel/spouses.*

4703-3-01 **Seal requirements.** *Five year rule review; update to align policy with building department requirements.*

4703-3-03 **Firm names.** *Five year rule review, no changes.*

4703-3-04 **Branch offices.** *Five year rule review, no changes.*

4703-3-05 **Interstate practice.** *Five year rule review, no changes.*

4703-3-06 **Injunctions.** *Five year rule review, no changes.*

4703-3-08 **Professional responsibility.** *Five year rule review, no changes.*

4703-3-09 **Written contract.** *Five year rule review, no changes.*

4703-3-10 **Authorship and control.** *Five year rule review, no changes.*

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4703-3-12 *Design build. Five year rule review, no changes.*

4703-3-13 *Communication: prohibition of improper contacts. Five year rule review, no changes.*

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

4703-1-01 *Definitions. 4703.02, 4703.06, 4703.07*

4703-1-02 *Applications. 4703.02, 4703.07*

4703-1-03 *Certificates. 4703.02, 4703.06, 4703.10, 4703.11, 4703.12, 4703.18*

4703-1-04 *Fees. 4703.02, 4703.16*

4703-2-01 *Examination. 4703.02, 4703.09*

4703-2-02 *Examination admission requirements. 4703.02, 4703.07*

4703-2-03 *Educational requirements and credits. 4703.02, 4703.07*

4703-2-04 *Training requirements. 4703.02, 4703.07*

4703-2-05 *Reciprocity. 4703.02, 4703.08*

4703-2-06 *Reimbursement of IDP enrollment fees. 4703.02, 4703.071*

4703-2-07 *Continuing education. 4703.02, 5903.03, 5903.12*

4703-3-01 *Seal requirements. 4703.02, 4703.12,*

4703-3-03 *Firm names. 4703.02, 4703.18*

4703-3-04 *Branch offices. 4703.02, 4703.18*

4703-3-05 *Interstate practice. 4703.02, 4703.08*

4703-3-06 *Injunctions. 4703.02, 4703.181*

4703-3-08 *Professional responsibility. 4703.02, 4703.18, 153.70*

4703-3-09 *Written contract. 4703.02*

4703-3-10 *Authorship and control. 4703.02*

4703-3-12 *Design build. 4703.02, 4703.182*

4703-3-13 *Communication: prohibition of improper contacts. 4703.02*

3. Does the regulation implement a federal requirement? No.

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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? *No.*

If yes, please briefly explain the source and substance of the federal requirement.

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

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)?

The activities of this Board benefit two categories of people: consumers of architectural services and the public at large. Regulation protects consumers by seeking to ensure that people who hire architects are not victimized by incompetence or dishonesty. Board regulations allow incompetent or dishonest architects to be disciplined, including discipline that results in the suspension or revocation of the architect's license to practice. This Board has used its disciplinary powers in the past, and is always prepared to do so in appropriate cases. Regulation also protects the public at large. It is not just the person who engages the architect who may be injured by negligent design. It is the public users of buildings who most need the protection afforded by our system of regulation.

Regulation of architecture benefits the public in less obvious ways as well. An architect's actions shape the social and physical environment. The design of a building and its relationship to its surroundings affects the safety, comfort, and convenience of its users and passersby. Design determines to a considerable degree the demands a building makes on public services and utilities, and it is increasingly important that buildings are designed to be more environmentally responsive. In many projects today, the owner in the traditional sense often no longer exists. Instead, he or she has been largely supplanted by a developer whose interest lies not necessarily in long-term ownership, but in the development of an income-producing asset that can be transferred to another party. Architects are held to standards that do not permit projects to be designed without regard for their qualities after completion. Thus, the architect is increasingly the representative of the public's interest in well-designed, safe buildings. All of these potential benefits are best fulfilled if those responsible for the design of buildings are appropriately educated, have the required experience, and are rigorously examined before becoming licensed to practice the profession of architecture.

Finally, national uniformity among the individual licensing authorities depends upon every jurisdiction having a comparable regulatory system. National Council of Architectural Registration Boards (NCARB), a non-profit organization of which this Board and all other U.S. jurisdictions are the only members, fosters consistent rules and regulations that facilitate interstate practice.

The architects represented by this Board would be denied access to the NCARB Certificate, which facilitates reciprocity to practice in other jurisdictions, if this Board did not have registration laws in place similar to those of other U.S. jurisdictions. Thus, our current

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regulatory policies not only protect the consumer and ensure public safety, but they also make it possible for architects licensed by this Board to practice in other jurisdictions through the NCARB certification process.

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

Satisfactory outcomes will be measured by customer satisfaction with the changes, as evidenced by comments received from customers.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The rules under consideration were sent to all licensees and the Architects Society of Ohio (AIA Ohio); discussed at AIA Ohio board meetings and meetings of the Ohio Architects Board.

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

All comments were responded to by the Executive Director via email and discussed by the Board at the May 2014 Board meeting. A summary of the comments is as follows:

4703-1-01: Definitions *One comment suggested the Board lower the age (from 65 to 62) at which a licensee can apply for Emeritus. In 2013, the American Institute of Architects raised their Emeritus age to 70. Since 2006, 247 Ohio architects have upgraded to Emeritus. In addition, the average (“mean”) age of Ohio Emeritus architects is 76 years. Twenty percent of the Active licensees are over age 65. After discussion, the Board declined to change the policy.*

It was also suggested that the Board differentiate between a violation of “Moral Turpitude” and “Good Moral Character.” However, the Board feels that the definitions are well-established within legal doctrine and do not require additional elaboration within the Board’s rules.

A comment was received regarding broadening who can use the term, “principal.” Revised Code section 4703.18 requires the firm’s principal to be a registered architect and requires a registered architect be in responsible control of a firm’s architectural activities and decisions. While it is correct that a firm’s ownership may include individuals licensed in other design professions, the Revised Code requires the person in responsible control to be a registered architect.

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4703-1-04: Fees. *The elimination of the Emeritus fee was supported in the comments.*

4703-2-01 Examination. *A suggestion was made to do away with the “five year rule.” There are two five year rule policies: the first has to do with how long a passing score is valid on the national exam. Passing scores are valid for five years, after which the candidate must retake the exam if they have not passed their remaining divisions. This serves to motivate candidates to complete their exams in a timely fashion and ensures they are being licensed based upon on the current knowledge needed to practice architecture competently, not what they were tested on ten or even twenty years ago. Extensions are available for conditions such as pregnancy or adoption of a child, serious medical condition or military service. A study by the National Council of Architectural Registration Boards (NCARB) found that the median time for a candidate to complete the exam in 2.6 years.*

The second five year policy/rule gives exam candidates five years of eligibility in which to pass the exam. The five years is automatically extended for another five years every time a division of the exam is taken, whether pass or fail. Inactive candidates have their eligibility voided and must reapply under the current requirements of the Board. Extensions are granted upon request.

Both of the above are policies were adopted by NCARB Member Boards and will remain in place regardless of what Ohio does. Ohio is an NCARB member board.

In addition, licensees would be harmed if Ohio deviated from the national standards because there are states which would not recognize credentials based on policies outside these standards. Nationally, architects are licensed in an average of 4.5 states and Ohio does not wish to implement policies which would be an impediment to obtaining a license in other jurisdictions.

The Board proposes to change the rule to proof satisfactory to the Board that he or she has successfully passed the A.R.E in accordance with the NCARB pass/fail standards current at the time the applicant took the A.R.E. This will enable candidates to immediately benefit from updates to exam policies.

4703-2-02 Examination admission requirements. *No comments were received.*

4703-2-03 Educational requirements and credits. *No comments were received.*

4703-2-04 Training requirements. *No comments were received.*

4703-2-05 Registration by reciprocity. *No comments were received.*

4703-2-06 Program providing for reimbursement of IDP enrollment fees. *A request was received to add Bowling Green State University to the list of schools eligible for*

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reimbursement. Revised Code section 4703.071 only allows the reimbursement to be made to students enrolled in schools with programs accredited by the National Architectural Accrediting Board (NAAB). Bowling Green is a candidate for accreditation and should receive full accreditation in 2-3 years. Per the counsel of the Board's Assistant Attorney General, the board cannot add Bowling Green to the list until they are fully accredited.

4703-2-07 Continuing education. The Board's only proposed revision to the rule is to modify the exemptions to incorporate the changes to military exemptions required by Revised Code section 5903.

However, it was suggested that the rule allow for carry-over of credits from one period to the next. The board disagrees for two reasons: 1) To allow carry over would conflict with the Model Law adopted by the member boards of the National Council of Architectural Registration Boards (NCARB) and which in turn would cause compliance issues for architects licensed in multiple jurisdictions. (Architects are licensed in an average of 4.5 states.) Ohio adopted the NCARB Model Law in order to simplify the CE requirements and created more uniformity across the country. The Model Law has simplified a patchwork of conflicting requirements across the country and simplified the requirements.

2) The experience of auditing Landscape Architects has shown that carry-over is difficult to track and causes compliance issues for registrants. As a result, the Landscape Architects Board is proposing to do away with carry-over.

It was also suggested that "occupant comfort" be added to the list of topics eligible for Health, Safety and Welfare credits. Again, the Board does not wish to deviate from Model Law because it would cause compliance issues for licensees who are registered in multiple jurisdictions. The list of topics is linked to the subject matter tested by the examination. Should Model Law be updated, the Board would consider adopting any revisions.

4703-3-01 Seal requirements. A comment regarding electronic documents stated the policy requiring the seal to be voided if the documents were altered in any way. This conflicts with building department procedures, which requires the plans examiner to mark up the electronic documents. This is the first five year review of this rule and the first time this issue has been raised. The board agreed and proposes to change the rule to accommodate building department procedures.

Another comment referenced the fact that persons other than registered design professionals can submit plans to building departments. This was viewed as diminishing the authority of architects. However, this is outside of the Board's jurisdiction and the Board is unable to change this policy.

4703-3-03 Firm names. No comments were received.

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4703-3-04 *Branch offices. No comments were received.*

4703-3-05 *Interstate practice. No comments were received.*

4703-3-06 *Injunctions. No comments were received.*

4703-3-08 *Professional responsibility. No comments were received.*

4703-3-09 *Written contract. A comment from the insurance industry suggested that professional liability insurance be added to the written contract requirements. The board does not wish to expand the requirement for insurance beyond public project. Adding it to the rule would create an unnecessary burden on licensees.*

Another comment suggested that “standard of care” be added to the rule. As it is already located within the definition of “responsible control” in Administrative Code section 4703-1-01, the board does not feel it needs to be duplicated in this rule.

4703-3-10 *Authorship and control. Five year rule review, no changes.*

4703-3-12 *Design build. Five year rule review, no changes.*

4703-3-13 *Communication: prohibition of improper contacts. Five year rule review, no changes.*

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? *N/A*

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 Board reviewed the proposed rules and did not find a need to changes beyond those proposed. The Board discussed and considered all of the suggestions made. The Board feels it is in the best interest of the licensees and exam candidates to follow NCARB Model Law whenever possible as it feels there is a benefit to all customers when states have analogous standards for registration, definitions, fees, applications, registration standards, examination, registration, rules of professional conduct, and practice by firms. Uniform standards make it easier for licensees and firms to obtain licensure and offer and provide architectural services in multiple states.

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. *N/A*

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation? *The Board is the only entity regulating the profession of architecture.*

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.

The Board will communicate the proposed and final changes via its newsletter, website and email. The Board will communicate the proposed and final changes via its newsletter, website and email.

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;

The impacted business community is registered architects and architecture firms.

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

Fees may be considered an adverse impact. The exam application fee is \$50; no additional fees are paid until the applicant renews their license, regardless of how many years it takes to become licensed. The initial reciprocal fee is \$250. Individual renewal fees are \$125 every two years. Firm fees are \$125 for new firms and \$100 per year to renew.

Approximately one hour per month is needed for the continuing education requirement.

Fines are set by statute at a maximum of \$1000 per violation and \$5,000 for multiple infractions.

The Board's applications are very simple and collect only the information required by statute or to create a record in ELicense. The Board's applications take only a few minutes to complete.

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.

See above.

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

Fees are necessary for board operations and to enforce the laws and rules regulating the profession.

The Board's forms (applications) collect only the information required by statute or to create a record in ELicense.

The practice of architecture is dynamic. The ways in which architectural services are performed and the materials and systems incorporated into buildings are constantly changing. The Board encourages all architects to continue their professional development. In accordance with the authority granted by the Legislature to do so, this Board has recognized the need for registrants to demonstrate that they have maintained their competence and have stayed abreast of changes in practice by meeting continuing professional development requirements.

Regulatory Flexibility

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

Exams candidates can request extensions of the five year window; continuing education exemptions and extensions are available for licensees, including military personnel and spouses. The Board works one-on-one service to applicants and registrants to assist them in complying with its regulations.

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?

The Board does not issue fines to small businesses for first-time paperwork violations.

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

Board staff works closely with small businesses and individuals to achieve compliance and assists small businesses in locating resources to complete applications.

We are known as a resource for locating answers to a broad realm of questions related to the built environment, and our customers can count on us to provide prompt and personalized service.