

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: Ohio Construction Industry Licensing Board Rules

Rule Number(s): 4101:16-1-01 through 4101:16-4-04

Date: 5/10/2015

Rule Type:

XX New

Amended

XX 5-Year Review

XX Rescinded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.

Pursuant to Ohio Revised Code Section 4740.04, the rules set forth in Chapter 4101:16 of the Ohio Administrative Code ("OAC") regulate the construction industry by establishing licensing and training requirements for HVAC contractors, hydronics contractors, refrigeration contractors, electrical contractors, and plumbing contractors, to be administered

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by the Ohio Construction Industry Licensing Board. The rules establish the powers and duties of the Board, and establish licensing qualification standards, experience requirements, and continuing education/maintenance requirements for licensees. The rules also set forth requirements for the training agencies that educate the licensees.

The existing 28 rules, which are being reviewed as part of the 5 year rule review process, are proposed to be rescinded in order to reorganize the entire package for ease of understanding. The Board also created a new rule recognizing veterans' military experience in reviewing licensing applications, and a new rule creating an incentive program for compliant licensees. This "compliant contractor program" would reduce the number of continuing education hours for those who demonstrate continued compliance with Board rules, and would also permit a triennial license renewal schedule. The new rule package is reorganized and amended, and contains 24 new rules. See "Attachment A" for a rule-by-rule breakdown.

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

R.C. 4740.04, 4740.05

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.

There are no federal requirements mandating these rules.

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)?

Pursuant to Ohio Revised Code Section 4740.02 the Ohio General Assembly established the Ohio Construction Industry Licensing Board to regulate certain contractors to ensure the safety of their services. The nature of the services regulated (HVAC, hydronics, refrigeration, electrical, and plumbing) are such that any sort of inexperience or incompetence can cost lives. The industries are highly technical and potentially dangerous, and as such the Board must ensure that each practitioner is highly qualified and trained. These rules – the licensing requirements, the continuing education requirements, the insurance and experience requirements – are designed to ensure quality work is being done by knowledgeable and qualified experts.

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

The rules are successful when Ohioans are protected accidents arising from faulty HVAC, hydronics, plumbing, refrigeration, or plumbing work by ensuring high standards for those contractors. The rules are also successful when the construction industry has procedures for interacting with the Board which in turn enables the division to conduct business in the most efficient manner possible while keeping costs to a minimum.

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.

Members of the industry were invited to a meeting on September 8, 2014 and again on October 20, 2014 to discuss certain portions of the rules, and stakeholders were emailed the proposed rule package on December 20, 2014 and asked for their comments by January 5, 2015. Further, stakeholders are represented on the Board. The Board reviewed and approved the proposed rules on December 17, 2014.

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

Stakeholders are supportive of the entire rule package.

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?

No scientific data was used to develop these rules.

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?

There are no alternative standards to consider.

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.

No. These rules are not appropriate for performance based regulations.

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

The OCILB rules are authorized by R.C. Chapter 4740. The Board is the only entity required and permitted to adopt rules necessary for implementing the provisions of Chapter 4740. In addition, the agency conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure there are no other regulations in place pertaining to these specific rules.

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 Department will ensure that all members of the construction industry have been notified about the changes to the 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;

Electrical, HVAC, hydronics, refrigeration, and plumbing commercial contractors are impacted by these rules, as are the training agencies which provide continuing education for those contractors.

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

For licensees (electrical, HVAC, hydronics, refrigeration, and plumbing), the adverse impact consists of application fees, license fees, renewal fees, background check fees, and possible late fees, as well as the tuition costs for continuing education courses and the cost to take the examination. There is also some personnel time in completing forms and applications.

For training agencies, the adverse impact consists of the application fee, the course fees, as well as the personnel time in completing the approval forms.

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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The adverse impact for the licensees (electrical, HVAC, hydronics, refrigeration, and plumbing contractors) consists of: a \$25.00 application fee, a \$25.00 license fee, and a \$60.00 renewal fee. There is also a late renewal fee of up to \$120.00. The fees for the background check are collected by other entities, but total \$46.00. The examination fees are also collected by other entities, but total \$150.00. The tuition costs for continuing education vary depending on the approved training agency chosen, and are therefore difficult to quantify. The cost per year typically varies from being completely free (as part of association dues) to a few hundred dollars.

For licensees and training agencies, the application fee is \$25.00. The course fees are \$10 for each course, plus one dollar per credit hour for each course and attendee. The personnel time they will spend to complete forms is negligible and cannot be quantified.

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

The Board is required to implement rules section 4740.04(G) of the Ohio Revised Code to regulate the industry. The safety assurance provided by these rules justifies the small adverse impact to the industry.

Regulatory Flexibility

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

Given the nature of the businesses regulated (most of whom are small), and in order to ensure the safety of the industry, the proposed rules do not provide exemptions specifically addressed to small businesses. R.C. Chapter 4740 mandates apply universally to all licensees.

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 consistently waives late fees for first-time offenders, in accordance with Executive Order 2008-04S.

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

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The Division is easily accessible for questions via internet, phone and e-mail. The Division strives to assist small businesses into achieving and maintaining compliance with requirements of R.C. Chapter 4740 and O.A.C. Chapter 4101:16-1.

Exhibit A – Rules Overview Memorandum

OCILB Rule Review	Overview of Changes
4101:16-1-01 RESCIND	Notice of administrative rules hearing: Rescinded in order to reorganize and reincorporate into proposed new OAC 4101:16-1-02
4101:16-1-01 NEW	Definitions: Reorganizes and incorporates current OAC 4101:16-1-03 and 4101:16-3-01; adds new definitions for veterans’ initiatives and compliant contractor program.
4101:16-1-02 RESCIND	Public meeting: Reorganized and reincorporated into proposed new OAC 4101:16-1-03
4101:16-1-02 NEW	Notice of administrative rules hearing: Reorganizes and incorporates current OAC 4101:16-1-01
4101:16-1-03 RESCIND	Definitions: Rescind in order to reincorporate and reorganize all definitions into one section, proposed new OAC 4101:16-1-01.
4101:16-1-03 NEW	Public meeting: reorganizes and incorporates current OAC 4101:16-1-02.
4101:16-1-04 RESCIND	Administrative section officers: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-1-04, so that all duties of administrative section are contained in one rule
4101:16-1-04 NEW	Administrative section: reorganizes and reincorporates current OAC 4101:16-1-04, -05, -05, and 07, so that all duties of administrative section are contained within the same rule
4101:16-1-05 RESCIND	Annual report to the director of commerce: Rescinded in order to reorganize and incorporate into one rule regarding the administrative section, proposed new OAC 4101:16-1-04
4101:16-1-05 NEW	Investigations: Reorganizes and reincorporates current OAC 1401:16-4-01
4101:16-1-06 RESCIND	Annual fiscal statement. Rescinded in order to reorganize and incorporate into one rule regarding the administrative section, proposed new OAC 4101:16-1-04
4101:16-1-06 NEW	Disciplinary action against a licensee: incorporates current OAC 4101:16-4-03, but amends the felony ban and adds a list of disqualifying offenses in accordance with R.C. 4740.10. The rule also removes the language of current OAC 4101:16-4-03 that duplicates the language of R.C. 119.
4101:16-1-07 RESCIND	Notification of examination result: Rescinded in order to reorganize and incorporate into one rule regarding the administrative section, proposed new OAC 4101:16-1-04
4101:16-1-07 NEW	Adjudication hearings: reorganizes and reincorporates current OAC 4101:16-4-04
4101:16-1-08 RESCIND	Display of license. Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-05
4101:16-1-08 NEW	Compliant Contractor Program – sets forth the Compliant Contractor Program enunciated in R.C. 4740, including the qualification requirements and the benefits.
4101:16-1-09	Replacement of a license: Rescinded because it imposes an unfair cost of license

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RESCIND	replacement.
4101:16-1-10 RESCIND	Notice of renewal date and application for renewal: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-06.
4101:16-1-11 RESCIND	Fees and insurance: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-09.
4101:16-1-12 RESCIND	Reciprocity: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-10.
4101:16-1-13 RESCIND	Inactive status: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-12
4101:16-1-14 RESCIND	Criminal background check: rescinded in order to incorporate into proposed new OAC 4101:16-2-02
4101:16-2-01 RESCIND	Continuing education - hours of instruction requirements: Rescinded in order to reorganize and reincorporate into 4101:16-2-08.
4101:16-2-01 NEW	Qualifications to take licensing examination: reorganizes and incorporates current OAC 4101:16-3-02
4101:16-2-02 RESCIND	Continuing education requirements – reporting: Rescinded in order to reorganize and reincorporate into 4101:16-2-09.
4101:16-2-02 NEW	Application procedures for licensing examination and results: For organizational clarity, incorporates current OAC 4101:16-3-03 (application procedures) and OAC 4101:16-1-14 (criminal background check) into one rule explaining the application process for new licensees. The proposed new rule also adds the list of disqualifying offenses set forth in proposed OAC 4101:16-1-06
4101:16-2-03 RESCIND	Training agencies: rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-3-01.
4101:16-2-03 NEW	Examinations: Reorganizes and reincorporates current OAC 4101:16-3-04
4101:16-2-04 RESCIND	Continuing education - course approval. Rescinded in order to reorganize and reincorporate into 4101:16-3-03.
4101:16-2-04 NEW	Issuance of licenses to successful applicants: Reorganizes and restates current OAC 4101:16-3-05
4101:16-2-05 NEW	Display of license: Reorganizes and restates current OAC 4101:16-1-08.
4101:16-2-06 NEW	Notice of renewal date and application for renewal: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-1-10.
4101:16-2-07 NEW	Renewal of license: Reorganizes and restates current OAC 4101:16-3-06.
4101:16-2-08 NEW	Continuing education - hours of instruction requirements: Reorganizes and restates current OAC 4101:16-2-01.
4101:16-2-09 NEW	Fees and insurance: reorganize and incorporates current OAC 4101:16-1-11.
4101:16-2-10 NEW	Reciprocity: reorganizes and incorporates current OAC 4101:16-1-12.
4101:16-2-11 NEW	Conditional Licenses: created in accordance with R.C. 4740 to grant conditional licenses in lieu of outright denial.
4101:16-2-12 NEW	Inactive status: reorganizes and incorporates current OAC 4101:16-1-13
4101:16-2-13	Military provisions related to licensure: creates a special status for military

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NEW	service, in accordance with Revised Code Chapter 5903 and HB 78
4101:16-3-01 RESCIND	Examinations for license: definitions: Rescinded in order to reorganize and incorporate into one definitions section, proposed new OAC 4101:16-1-01.
4101:16-3-01 NEW	Approval of Training agencies: Reorganizes and restates current OAC 4101:16-2-03.
4101:16-3-02 RESCIND	Qualifications to take licensing examination: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-01
4101:16-3-02 NEW	Continuing education requirements – reporting: Reorganizes and restates current OAC 4101:16-2-02
4101:16-3-03 RESCIND	Application procedures for taking licensing examination: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-02
4101:16-3-03 NEW	Continuing education - course approval: Reorganizes and restates current OAC 4101:16-2-04
4101:16-3-04 RESCIND	Examinations: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-03
4101:16-3-05 RESCIND	Issuance of licenses to successful applicants: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-04
4101:16-3-06 RESCIND	Renewal of license: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-2-07.
4101:16-4-01 RESCIND	Investigations of complaints; time limitation: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-1-05
4101:16-4-02 RESCIND	Complaint review: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-1-05
4101:16-4-03 RESCIND	Criteria for disciplinary action against a licensee: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-1-06
4101:16-4-04 RESCIND	Adjudication hearing: Rescinded in order to reorganize and incorporate into proposed new OAC 4101:16-1-07