

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Building Standards

Regulation/Package Title: Certification Rules

Rule Number(s): 4101:7-1-01, 4101: 7-1-02, 4101:7-2-01, 4101:7-3-01, 4101:7-4-01, 4101:7-5-01, 4101:7-6-01

Date: June 14, 2017

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☒ Amended ☐ Rescinded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.

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

4101:7-1-01: Adds reference to new proposed rule in AG 93 moving DIC fees out of the building code (4101:1) to 4101:7.

4101:7-1-02: Adds definition for building plans examiner; adds definition for fire protection plans examiner; and adds definition for mechanical plans examiner.

4101:7-2-01: Clarifies provisions for building department certification applies to both residential and non-residential departments; adds list of required personnel for certified residential building departments; reorganizes list of elective building department personnel and adds building plans examiner and fire protection plans examiner; adds provision for notification of the Board of replacement personnel; adds reference to certificate of completion for alterations and repairs; and makes general editorial changes and clarifications.

4101:7-3-01: Reorganizes list of building department personnel certifications and adds building plans examiner and fire protection plans examiner; adds requirements for new building plans examiner certification; adds 5 years experience as registered architect or engineer to qualify for electrical plan examiner certification; adds 5 years experience as registered architect or engineer to qualify for electrical plumbing plans examiner certification; adds 5 years experience as registered architect or engineer to qualify for mechanical plans examiner certification; adds requirements for new fire protection plans examiner certification; adds experience as non-residential building experience to qualify for IU inspector; clarifies that approved ESI applicants must complete required exams before receiving interim certification as required by Chapter 3783; clarifies that master plans examiners must have a current architect or engineer registrations to renew certification; adds provision recognizing AIA approved HSW courses for fulfilling CE requirements; adds provision giving instructors of Board-approved CE courses 3 CE hours for every hour taught; adds requirements for new elective plans examiner trainee certifications; reorganizes and modifies requirements for residential plans examiner trainee certification; reorganizes requirements for inspector trainee certifications; adds provision that master plans examiner may supervise elective plans examiner trainees; extends the trainee certification period from a maximum 4 years to 6 years; clarifies supervisory requirements of plans examiner trainees and adds provisions for new elective plans examiner certifications; clarifies supervisory requirements of inspector trainees; and makes general editorial changes and clarifications.

4101:7-4-01: Updates Board website address.

4101:7-5-01: Clarifies that certification holder is responsible to notify the Board of address changes and makes general editorial changes and clarifications.

4101:7-6-01: Makes general editorial changes and clarifications.

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

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

- 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(E) directs the Board to certify municipal, township, and county building departments and their personnel to enforce the rules promulgated by the Board. The Board's certification program is unique in the country ensuring uniform enforcement by qualified code officials. The Board requires a separate certification for Building Official, Plans Examiners, and Inspectors. Conditions of certification include minimum experience requirements as well as the passage of prescribed examinations. An individual must hold the appropriate certification to perform the duties set forth in the Board's rules for that certification.

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

The proposed changes are primarily directed at opening more paths to obtain Board certification as an elective plans examiner to address building department staffing shortages while maintaining equivalent qualifications. The success will be measured by an increase in certification applications for elective plans examiner certifications.

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.

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The Board received Petition 16-10 on September 16, 2016 submitted by the Ohio Building Officials Association requesting the Board to amend its rules to address staffing problems. Representatives from the Ohio Building Officials Association attended several meetings of the Certification Committee to respond to the Board's questions and concerns about the petition. The petition was denied by the Board at its meeting on December 9, 2016, in preference for alternative language developed with the input of the petitioner and other stakeholders.

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 12:00 Noon and the following individuals attended: Amit Ghosh, City of Columbus, Andrea Ashley, AGC, 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?

Carl Lamping spoke on behalf OBOA and the Large & Medium Jurisdiction workgroup and stated support for the proposed changes to the certification rules that give flexibility to building departments in staffing plans examiner positions. Paul Buehrer stated that the proposed changes would also help small departments with staffing issues. Charles Huber noted a reference to 4101:8-1-01 was left out of paragraph (B).

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?

In August 2015, the Board sent out a survey to building officials to obtain information on potential building department staff shortages now and in the future. This survey asked the following:

- Total number of building department employees?
- Number of employees eligible to retire...now, within 2 years, within 5 years, and within 10 years?

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- Do you have vacancies you are having trouble filling right now?
- Additional comments – Please provide any additional information or factors affecting your ability to staff your department with certified personnel now or in the future.

Based on the 105 responses, the Board found:

11% of current building department employees are eligible to retire now
 12% of current building department employees will be eligible to retire in 2 years
 19% of current building department employees will be eligible to retire in 5 years
 37% of current building department employees will be eligible to retire in 10 years

30% of the building officials surveyed stated that they have vacancies that they are having trouble filling now

The proposed changes are intended to address the current and expected staffing shortages by opening more paths to obtain Board certification as an elective plans examiner while maintaining equivalent qualifications.

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?

Revised Code 3781.10 requires the Board to certify building departments and their personnel to enforce the Board's rules. Further, the Board is required to specify the requirements for certification including satisfactory completion of required examinations and continuing education to maintain certification. The Board coordinates examination requirements for personnel with the International Code Council's standards for certification. This ensures comprehensive knowledge in the field the individual is seeking certification in and allows an individual to qualify for ICC certification if he or she seeks a position in other states. Many states only require the ICC certification. The certification program in Ohio, however, provides a mechanism for oversight of enforcement by local building departments of the Board's rules and accountability for failure to properly enforce the codes.

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.

Not applicable. As these rules regulate experience and examination requirements for individuals and entities that enforce the Board's rules, performance-based regulation considerations would not be applicable.

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

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The Board has sole statutory responsibility for regulating building department personnel certification requirements. Therefore, there is no duplication of other existing regulations.

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 proposed building department personnel certification requirements, the new requirements will only apply to applications for certification submitted after the effective date of the rule.

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 proposed amendments do not include any new or amended substantive changes or regulations which would increase the cost of compliance. The filing fee for certification will remain at \$30.

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

Not applicable. 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.

Not applicable. 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 substantive changes in the proposed rules impact certified building department personnel.

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?

Not applicable. The proposed amendments do not include penalties or fines. Continuing law provides the Board with an option to place certified personnel who violate the Board's rules on probation instead of revocation or suspension of certification. The probation often includes additional continuing education training in the area of identified deficiency.

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.