

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 Regulations

Rule Number(s): 4101:16-1-05; 4101:16-2-04; 4101:16-2-07; 4101: 16-2-08; and
4101:16-3-03.

Date: 6/07/2017

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☐ Rescinded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.

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

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and training requirements for HVAC contractors, hydronics contractors, refrigeration contractors, electrical contractors, and plumbing contractors, to be administered by the Ohio Construction Industry Licensing Board (OCILB or 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 package contains 5 rules which are being amended to correct grammatical errors and to empower the Board to register and oversee online continuing education courses. While the Board has complete authority over the establishment and maintenance of continuing education for its licensees, current rules prohibit online courses. The rule with the only substantive changes in the package, which deal exclusively with online education, is 4101:16-3-03. See “Attachment B” for a rule-by-rule breakdown.

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

R.C. 4740.04(G); R.C. 4740.04(H); R.C. 4740.05(A)(4-6); R.C. 4740.05(D); R.C. 4740.05(F);

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. No.

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 continually 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 licensees have convenient and effective ways to satisfy regulatory mandates on continuing education while maintaining integrity in the process.

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.

Stakeholders were contacted via e-mail on May 02, 2017.

A list of stakeholders may be found in “Attachment A” of this document.

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

The stakeholders are supportive of this entire rule package without exception. Further, each of the specialty sections, including the administrative section, have reviewed and approved of all of the proposed changes to the rules.

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?

The Agency did not consider regulatory alternatives, as the Industry is supportive of this entire change rule package and suggested no amendments, rescissions, or new rules. The proposed changes merely correct grammar mistakes and add an easier, more convenient manner for licensees to fulfill their respective continuing education requirements mandated by law.

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.

Commerce will notify the Industry about the rule package. Availability of convenient online education courses will be communicated to the industry by the Board and the staff of the Division through paper and online means. The Board will consider the substance of courses, the providers of the courses, and administrative aspects of providing those courses to licensees in much the same manner that it considers those issues as they pertain to current continuing education courses.

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 community includes Electrical, HVAC, hydronics, refrigeration, and plumbing commercial contractors who are currently unable to fulfill continuing education requirements on-line, the training agencies which currently provide continuing education for those contractors, and organizations or individuals that want to provide online education and are currently prohibited from offering it.

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

Costs associated with developing online curriculum and an online system by which to administer its courses. Because there is no requirement to either offer courses online or for licensees to take courses online the overall impact will be minimal.

c. Quantify the expected adverse impact from the regulation.

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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.

Permitting online education for licensees is a convenience to licensees and could result in significant savings, both in travel time and registration costs, for those licensees. Furthermore, there is an opportunity for current and new training agencies to embrace online education and reduce costs including renting or leasing facilities and personnel costs of staffing those trainings.

The only conceivable adverse impact would be felt by the current training agencies that are unwilling to offer online educational courses. It is possible that agencies which refuse to develop or offer online education may see a reduction in participation from licensees. This adverse impact has been partially offset by a provision in the rule that permits licensees to fulfill a maximum of 50% of their respective continuing education obligations through online course work.

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. It is likely that the reduction in overhead for training agencies may result in more affordable training opportunities for licensees.

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

The rules, which are promulgated pursuant to the requirements of R.C. 4740, are intended to protect the safety of the public by ensuring competence and promoting excellence of electrical, HVAC, hydronics, refrigeration, and plumbing commercial contractors. While staying true to this goal, it is also the goal of the Board to promote efficiencies to ease burdens on licensees without jeopardizing the Board's role in oversight. Any potential adverse impact is more than offset by the savings in time and money by individual contractors and training agencies that provide online education.

Regulatory Flexibility

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

By permitting individuals to fulfill some continuing education requirements online, the Board is promoting flexibility and an alternative means to comply with educational requirements for small

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businesses. The current regulation is inflexible and requires in person attendance to fulfill all the licensee's continuing education requirements.

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 compliance and enforcement actions established by these rules do not result in new or additional fines or penalties for paperwork violations.

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

The OCILB is easily accessible for information or questions via internet, phone and e-mail. The OCILB strives to assist small businesses to maintain compliance with each of the requirements of R.C. Chapter 4740 and O.A.C. Chapter 4101:16, through Industry meetings, roundtable sessions, and other outreach events.

EXHIBIT A

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