



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Board of Building Standards

Rule Contact Name and Contact Information:

Regina Hanshaw 614-644-2613

Regulation/Package Title (a general description of the rules' substantive content):

Amendments Group 98 - Ohio Building Code Amendments

Rule Number(s): 4101:1-4-01 and 4101:1-34-01

Date of Submission for CSI Review: 11/15/19

Public Comment Period End Date: 12/13/19

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 2 rules (FYR? N)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **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:

4101:1-4-01 to incorporate clarifications and new exemptions from the 2018 International Building Code (IBC) model code Section 404.6 relating to atriums; to reorganize Section 406 based upon the 2018 IBC language for the purpose of clarifying the motor-vehicle related occupancy requirements; to modify Section 423 for the purpose of clarifying and simplifying the storm shelter requirements for first responder buildings; and to incorporate ICC Errata.

4101:1-34-01 to clarify the applicability of the referenced energy conservation standards in Section 3401.1.1.1; to reorganize, add clarifying sentences, and make editorial fixes to Section 3403.1 for the purpose of clarifying the intent of the requirements for additions to existing buildings; to add new Section 3403.6 which clarifies requirements for storm shelters when an addition is proposed to an existing building involving a first responder occupancy; to add new Section 3404.7 that clarifies that storm shelters are not required for alterations unless there is a change of occupancy; to add a

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clarification and an exemption in Section 3406.5 for opening protectives near an existing fire escape; to add a new Section 3408.5 that clarifies when storm shelters are required for a change of occupancy to an existing first responder building; to add a new compliance alternative Section 3412.2.1 that clarifies when storm shelters are required for a change of occupancy to an existing first responder building; to respond to Petition 19-05 which adds a clarifying sentence in Section 3412.2.2 describing how to evaluate partial change of occupancy; to reorganize, add clarifying sentences, and make editorial fixes to Section 3412.2.3.2 for the purpose of clarifying the intent of the compliance alternative requirements for additions to existing buildings; to add a new compliance alternative Section 3412.2.3.3 that clarifies when storm shelters are required for a change of occupancy to an existing first responder building; to add new compliance alternative Section 3412.2.4.2 that clarifies that storm shelters are not required for alterations unless there is a change of occupancy; to respond to Petition 19-06 which adds values for single tenant buildings and buildings without dwelling units in Section 3412.6.4; to bring back previous compliance alternative Section 3412.6.5.1 language addressing corridor wall construction; to respond to Petition 19-08 which adds a clarifying sentence to Section 3412.9.1 regarding evaluation of mixed occupancies; and to make general editorial fixes.

A detailed summary of the proposed amendments is attached as Exhibit A.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

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

Revised Code § 3781.11: <http://codes.ohio.gov/orc/3781.11v1>

Revised Code § 3781.111: <http://codes.ohio.gov/orc/3781.111v1>

Revised Code § 3791.04: <http://codes.ohio.gov/orc/3791.04v1>

Revised Code § 4104.43: <http://codes.ohio.gov/orc/4104.43v1>

4. 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.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

No applicable.

6. 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

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Revised Code...” It further requires that the Board’s rules also “relate to the conservation of energy and the safety and sanitation of those buildings.”

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

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

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. 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.

The Board maintains a stakeholder distribution list including building department personnel, contractors, designers and professional associations. The stakeholder list is available upon request. On May 23, 2019, the Board sent an email to all agency stakeholders informing them of a scheduled stakeholder meeting on June 17, 2019 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

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regular mail by June 17, 2019. On June 17, 2019 the Board conducted a stakeholder meeting on the proposed rules between 10:00 AM and 11:30 AM and the following individuals attended: Amit Ghosh, City of Columbus; Bill Prenosil, OFCC; and Gary Eodice, Heapy Engineering

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

Mr. Prenosil commented the he liked the clarification for occupant capacity but stated that the term “classroom” may be confusing because the nature of school construction has changed where instruction can take place in non-traditional settings. Mr. Prenosil stated he would research possible alternative language or clarifications of the “term” classroom for the Board’s consideration. Following the stakeholder meeting, Mr. Prenosil submitted suggested language which is attached as Exhibit B. However, last year the General Assembly adopted HB 21 effective September 28, 2018 which included new Revised Code § 3781.1010 enacting a moratorium on the building code requirement for schools to have storm shelters until September 15, 2019. HB 166 amended RC 3781.1010 to extend the moratorium until September 15, 2020 and required the Ohio Facilities Construction Commission (OFCC) to evaluate and make recommendations regarding appropriate requirements for storm shelters for Ohio school buildings. As a result the Board revised the rule package to remove proposed modifications to storm shelter requirements for school buildings pending recommendations from the OFCC.

11. 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?

Continuing law is based on the 2015 International Building Code (IBC) promulgated and amended by the International Code Council (ICC). The model codes developed by ICC are updated every three years through a process that incorporates petitioning, public hearings and voting by ICC members. The ICC Committees that oversaw the development of the different provisions in the 2015 IBC included building and fire code officials, architects, engineers, contractors, and representatives from the National Association of Home Builders, the National Fire Protection Association, Underwriters Laboratories, and other professional organizations.

When a petition to amend the model code is submitted, the proponent of the change must submit the proposed language of the amendment, the reason for the amendment including scientific data when applicable, and the cost impact of the amendment. All submitted petitions are then published prior to initial code development hearings on the petitions. Interested persons may review the proposed changes and attend the code development hearing and provide comments. A report then is published on the public hearings for review and then final action is taken on the proposed changes at final action hearings. All successful changes are incorporated into the next edition of the model code.

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Upon publication the Board's code committee reviews each substantive change included in the newest edition of the code and determines whether to recommend the change to the Board for adoption. The Board last fully updated the Ohio Building Code on November 1, 2017.

12. 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?

See response to Question 11.

13. 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 OBC 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.

14. 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.

15. 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 these 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.

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Adverse Impact to Business

16. 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; and

- Building owners
- Design Professionals
- Contractors
- Building Department Personnel
- Local governments

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

- Obtaining updated rules as published as the Ohio Building Code
- Becoming familiar with the changes through research and training

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.

After adoption of amendments to the building codes, publishers issue replacement pages for code users to update code books. If a code user has purchased a code book from a publisher and wish would keep it updated, the cost of replacement page packet is approximately \$25. However, the Board provides free view access to electronic versions of Ohio’s building codes which are regularly updated through a contract with International Code Council:
[https://codes.iccsafe.org/category/Ohio?year\[\]=Current+Adoption&page=1](https://codes.iccsafe.org/category/Ohio?year[]=Current+Adoption&page=1)

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

The amendments included in this package incorporate ICC Errata for the 2015 IBC, select sections from the 2018 IBC, unique Ohio text, and editorial fixes. The amendments are intended to correct mistakes, answer questions, and clarify existing code requirements. The clarifications help in the application and enforcement of the code. Additionally, the proposed changes include needed clarifications for storm shelter requirements in emergency medical service stations particularly in the case of alterations and additions of existing buildings. When the Board originally adopted this language, there were many unanswered questions, especially relating to storm shelters for existing buildings. When originally considering the model code storm shelter language for adoption in rule 4101:1-4-01, the Board weighed the cost of incorporating storm shelters vs. the possible life loss, the

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cost of replacing storm damaged buildings, and the inability of first responders to operate given loss of their buildings and decided to include the requirement after stakeholder meetings and numerous opportunities for public input resulted in no objections. The current proposed amendments are intended to further clarify the requirements.

Regulatory Flexibility

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

The rules do not have special exemptions or alternative means of compliance specifically for small business. The 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.

19. 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 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.

20. 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.

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August 2019 – E-Notification Phase

AMENDMENTS GROUP 98 - OHIO BUILDING CODE PROPOSED CHANGES

Ohio Administrative Code Rule Number	Paragraph/Section	Source of Proposed Change	Reason for Proposed Change
4101:1-4-01	404.6, exception #3	2018 IBC	Clarifies intent of exemption for atrium fire barriers
	404.6, exception #4	2018 IBC	Adds a new exemption for atrium fire barriers
	406.1- 406.8.3	2018 IBC	Reorganizes the entire section, modifies a few paragraphs, corrects code references, and renumbers sections to clarify the motor-vehicle related occupancy requirements
	406.4.2	ICC Errata	Corrects a Chapter 16 code reference
	423.1.1	BBS	Simplifies the section for Ohio-deletes references to high wind and hurricane storm shelters and refers, instead, just to tornado shelters.
	423.3	BBS	Changes “rescue and ambulance stations” to “emergency medical service stations” and adds a sentence referring to new occupant capacity section
	423.3.1	BBS	Adds a new section that prescribes the required occupant capacity of a required storm shelter for first responder buildings
	423.3.1		* No change
	423.4		* No change
	423.4.1		* No change
	424.4	ICC Errata	Changes “playground structure” to “play structure”
4101:1-34-01	3401.1.1.1	BBS	Changes “and” to “or”, recognizing that either the IECC or the ASHRAE 90.1 are acceptable energy code standards, not both.
	3403.1	BBS	Adds clarifying sentences and words to the “General” paragraph for additions

	3403.1.1	BBS	Editorial fix to capitalize two words
	3403.1.2	BBS	Adds an introductory sentence to clarify application of the section
	3403.1.2.1	BBS	Reorganizes the entire section, modifies a few words, renumbers subsections, and creates a new subsection to clarify how to apply the requirements for additions
	3403.1.2.2	BBS	Adds an introductory sentence to clarify application of the section, adds an option for fire wall separation of the existing and new building, and clarifies the intent of extending the sprinkler system into the existing building when a fire wall or fire barrier is not constructed
	3403.6	BBS	Adds a new section addressing storm shelters for additions to existing first responder buildings
	3403.6.1	BBS	Adds a new section that prescribes the required occupant capacity of a required storm shelter for an addition to an existing first responder building
	3403.6.1.1		*
	3403.6.1.2		*
	3404.1	BBS	Corrects a code reference
	3404.7	BBS	Adds a new section that clarifies that storm shelters are not required for alterations to existing buildings unless there is a change of occupancy
	3406.5	IEBC and IFC	Adds a clarifying dimension and an exception for the opening protectives required near an existing fire escape
	3408.5	BBS	Adds a new section that clarifies when storm shelters are required for a change of occupancy to an existing first responder building
	3408.5.1	BBS	Adds a new section that prescribes the required occupant capacity of a required storm shelter for a change of occupancy to an existing building
	3412.2.1.1	BBS	Adds a new section that clarifies

			when storm shelters are required for a change of occupancy to an existing first responder building
	3412.2.1.1.1	BBS	Adds a new section that prescribes the required occupant capacity of a required storm shelter for a change of occupancy to an existing building
	3412.2.2	Petition 19-05	*Adds a clarifying sentence for partial change of occupancy
	3412.2.3	BBS	Adds clarifying sentences and words to the general “Additions” section
	3412.2.3.1	BBS	Editorial fix to capitalize two words
	3412.2.3.2	BBS	Adds an introductory sentence to clarify application of the section
	3412.2.3.2.1	BBS	Reorganizes the entire section, modifies a few words, renumbers subsections, and creates a new subsection to clarify how to apply the requirements for additions
	3412.2.3.2.2	BBS	Adds an introductory sentence to clarify application of the section, adds an option for fire wall separation of the existing and new building, and clarifies the intent of extending the sprinkler system into the existing building when a fire wall or fire barrier is not constructed
	3412.2.3.3	BBS	Adds a new section addressing storm shelters for additions to existing first responder buildings
	3412.2.3.3.1	BBS	Adds a new section that prescribes the required occupant capacity of a required storm shelter for an addition to a first responder existing building
	3412.2.3.3.1.1		*
	3412.2.3.3.1.2		*
	3412.2.4.2	BBS	Adds a new section that clarifies that storm shelters are not required for alterations to existing buildings unless there is a change of occupancy
	3412.6.4	Petition 19-06	*Adds values for single tenant buildings and for buildings

			without dwelling units
	3412.6.5.1	BBS and Petition 19-07*	Brings back text from the original 2017 OBC Chapter 34 rule
	3412.6.16	BBS	Editorial fix
	3412.9.1	Petition 19-08	*Clarifies evaluation process for mixed occupancies

*Denotes a change from the Stakeholder phase

Hanshaw, Regina

From: Prenosil, William
Sent: Friday, June 28, 2019 7:57 AM
To: Regoli, Steven
Cc: Richards, Jay; Ohler, Deborah; Hanshaw, Regina
Subject: Storm Shelter Occupancy language

Steve,

Per our conversation recently, below is my suggestion on how to word the required Occupancy of Storm Shelters for schools.

Let me know your thoughts.

"The minimum required occupant capacity of storm shelters serving a Group E occupancy shall be the intended design occupant load for students and staff, as designated by the building Owner."

William Prenosil, R.A., LEED AP
Sr. Planning Manager

Ohio Facilities Construction Commission
30 West Spring St., 4th Floor
Columbus, OH 43215
Direct: 330-425-2332
Main: 614-466-6290
ofcc.ohio.gov
bill.prenosil@ofcc.ohio.gov